



April 22, 2013

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Re: Delta Plan Final Rulemaking and Regulation

Dear Council Members and Staff,

I am writing specifically to oppose the continuing exclusion of temporary water transfers from the Delta Plan regulation. These comments build upon those submitted by the Environmental Water Caucus in response to the draft Delta Plan regulation and rulemaking package; please reference the earlier comments on the proposed regulation contained therein.

Water transfers constitute a major impact to Delta water supply and quality, facilitating water transfers out of and through the Delta either by shifting water out of South-of-Delta reservoirs (allowing more Delta water to be exported and stored) or by transferring water through the Delta to either State Water Project (SWP) or Central Valley Project (CVP) contractors. Unfortunately, the environmental impacts of these transfers are often obscured by classifying such transfers as “temporary,” as most transfers thus classified do not require environmental review under the California Environmental Quality Act. The use of “temporary transfers” hide impacts in two respects: first, through being used for one-year renewals of what are essentially serial, repeated transfers, and second, through cumulative effects of single, very large “temporary” transfers and multiple “temporary” transfers occurring simultaneously. Because “temporary” transfers are frequently both serial in effect and cumulative in impact, they should be included as “covered actions” under the Delta Plan.

In fact, the State Water Resources Control Board (SWRCB) records demonstrate that most recent water transfers are classified as “temporary.” For example, in 2010 alone, 100% of the proposed water transfers were temporary, totaling over 250,000 acre-feet of water; the orders for the following are included as attachments.¹

Water Rights Order	Parties	Amount
2010-32	DWR, USBR, various licenses	220,000
2010-27	Merced ID	15,000

¹ See the SWRCB transfers website (Exhibit A), attached, current as of 4/22/2013:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

2010-25	Sacramento, SWP Contractors	4,377
2010-24	Tule, SWP Contractors	3,520
2010-23	Garden Highway MWC,	5,802
2010-22	South Sutter WD, SWP contractors	10,000
2010-17	Westlands WD	10,000

Under the proposed rulemaking, zero transfers would have been considered, despite totaling over 250,000 acre-feet. This is particularly troubling because many of these transfers, including the Tule transfer, were actually serial transfers occurring for the previous two or three years, that were re-approved each year as “temporary.”² Likewise, most transfers in 2009 and before were described as “temporary” and thus occurred without environmental review.³

After the above-referenced USBR transfer in 2010, the single largest temporary transfer occurred in 2012, for 100,000 acre-feet:

Arvin-Edison (2012)	DWR, Arvin-Edison, MWDSC	100,000
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There are also a number of specific “temporary” transfers which have been repeated over multiple years and therefore represent a serial transfer in nature. DWR has repeatedly authorized temporary transfers to Westlands Water District which transfer water on a temporary basis from other SWP users to Westlands. These transfers include the following examples, the official records of which have been included with this letter as attachments.

Water Right Order	Parties	Amount (acre-feet per year)
2001-15	DWR, Westlands WD	3,975
2002-07	DWR, Westlands WD	5,000
2003-11	DWR, Westlands WD	6,300
2005-15	DWR, Westlands WD	6,000
2006-12	DWR, Westlands WD	6,000
2007-14	DWR, Westlands WD	5,000
2008-31	DWR, Westlands WD	4,000
2009-26	DWR, Westlands WD	8,000
2010-17	DWR, Westlands WD	10,000

² See Protest to WRO 2010-25, App 11360 at 3; Protest to WRO 2010-24, App. 10030 at 2; Protest to WRO 2010-23, App. 1699 at 2; and Protest to WRO 2010-22, App 14804 at 4.

³ See FN1.

2011-10	DWR, Westlands WD	10,000
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In addition, WRO 2005-09 was an order denying an application by DWR and the Bureau of Reclamation to “temporarily” change the permitted water quality criteria for electrical conductivity (EC); as a “temporary” change this attempt could also be excluded from “covered actions” under the Plan regulation, even though it would have direct and serious consequences for Delta water quality and therefore belongs under covered actions. As can be seen from the above tables, DWR and Westlands engaged in a serial transfer program of increasing volumes for nearly a decade, yet evaded environmental review by classifying these transfers as “temporary.”

It may be argued that some of the above temporary transfers did not have an impact on the Delta, and thus deserve exclusion. But the degree of impact—that is, the *consistency determination*—is precisely the threshold issue which must be addressed by the Delta Stewardship Council when considering covered actions. In contrast, DSC has provided scant evidence that such transfers do not, in fact, impact the Delta—or that they are so benign that they *could not* affect the Delta. Along the same lines, the cumulative impacts of adding such “temporary” transfers together, both yearly and year-on-year, is also clearly significant, and should be evaluated as part of a consistency determination by the Council.

In sum, temporary water transfers do qualify as covered actions under the Delta Plan, and the exclusionary language should be deleted from the regulation. There is no justifiable reason to exclude these transfers from the Delta Plan’s covered actions. Further, the regulation’s proposal to “sunset” or limit the applicability of this section does not render this provision legal, as the regulation will still exclude such transfers for the time being and anticipates continuing to exclude such transfers under an as-yet-to-be-determined future program. To be legal, this measure should be the reverse: until such a future program has been enacted which conclusively demonstrates that such transfers will have no impact, the transfers must be included in the regulation as “Covered Actions.” Otherwise the Regulation essentially admits that this action *should* be covered, and that some future activity will justify its exclusion—an argument which does not bear legal weight.

The exclusion of temporary transfers from the regulation plainly exceeds the scope of authority provided to the Council under the Delta Reform Act for what should be included as “covered actions,” and should be removed accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read 'DALazar', with a stylized flourish at the end.

Adam Lazar

**Delta Plan Final Rulemaking/Regulation
Attachments/Exhibits to Comments**

- A. SWRCB Website on Transfers
- B. Water Rights Order 2010-32
- C. Water Rights Order 2010-27
- D. Water Rights Order 2010-25
- E. Protest to Water Rights Order 2010-25
- F. Water Rights Order 2010-24
- G. Protest to Water Rights Order 2010-24
- H. Water Rights Order 2010-23
- I. Protest to Water Rights Order 2010-23
- J. Water Rights Order 2010-22
- K. Protest to Water Rights Order 2010-22
- L. Water Rights Order 2010-17
- M. Water Rights Order 2012 (Arvin-Edison)
- N. Water Rights Order 2001-15
- O. Water Rights Order 2002-7
- P. Water Rights Order 2003-11
- Q. Water Rights Order 2005-15
- R. Water Rights Order 2006-12
- S. Water Rights Order 2007-14
- T. Water Rights Order 2008-31
- U. Water Rights Order 2009-26
- V. Water Rights Order 2011-10

Exhibit

A

Transfers and Temporary Urgency Actions – Orders

➤ [2013](#) | [2012](#) | [2011](#) | [2010](#) | [2009](#) | [2008](#) | [2007](#) | [2006](#) | [2005](#) | [2004](#) | [2003](#) | [2002](#) | [2001](#) | [2000](#) | [1999](#)

2013 Order	Project Identification	Date of Adoption
Order	In The Matter of Permits 11885, 11886 And 11887 (Applications 234, 1465 and 5638) of U.S. Bureau of Reclamation – Temporary Urgent Change and Instream Flow Dedication Pursuant to Water Code Sections 1435 and 1707	3/28/13

2012 Order	Project Identification	Date of Adoption
Order	In the Matter of License 2685 (Application 1224) of Merced Irrigation District – Petition for Temporary Change Involving the Transfer of 10,000 Acre-Feet of Water	10/24/12
Order	In the Matter of Permits 11885, 11886, and 11887 (Applications 234, 1465, and 5638) of U.S. Bureau of Reclamation – Temporary Urgent Change and Streamflow Dedication Pursuant to Water Code Sections 1435 and 1707	10/1/12
Order	In The Matter of Permits 12721, 11967, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973 and 12364 (Applications 5626, 5628, 9363, 9364, 9368, 13370, 13371, 15374, 15375, 15376, 15764, 16767, 16768, 17374 and 17376) of U.S. Bureau of Reclamation	7/6/12
Order	In the Matter of Permits 12947A, 12949, 12950, and 16596 (Applications 12919A, 15736, 15737, and 19351) of Sonoma County Water Agency - Order Approving Temporary Urgency Change	5/2/12
Order	In the Matter of License 2685 (Application 1224) – Petitions for Long-Term Transfer and Instream Flow Dedication Involving Up to 90,000 Acre-Feet of Water Per Year From Merced Irrigation District to U.S. Bureau of Reclamation.	4/2/12
Order	In the Matter of Permits 11885, 11886, 11887, 11315, 11316, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860 and 15735 (Applications 234, 1465, 5638, 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764 and 22316) – Petitions for Temporary Change Involving the Transfer of Up to 100,000 Acre-Feet of Water from Arvin-Edison Water Storage District to Metropolitan Water District of Southern California.	4/2/12
Order	In the Matter of Permit 13776 (Application 18115) – U.S. Bureau of Reclamation – Order Approving Temporary Urgency Change.	3/30/12

2011 Order	Project Identification	Date of Adoption

Order	In the Matter of Permit 16482 (Application 17512) Petition for Long-Term Change in Place of Use and Transfer of 10,000 Acre-Feet of Water per Year to Westlands Water District. Related Items: NOD Petition for Reconsideration Memo regarding Petition for Reconsideration Executive Order/Amended Order	11/21/11
Order	In the Matter of Permits 11885, 11886 and 11887 (Applications 234, 1465 and 5638) Temporary Transfer Of Water and Change Pursuant to Water Code Sections 1725 And 1707 – U.S. Bureau of Reclamation	9/30/11
Order	In the Matter of License 2685 (Application 1224) Order Approving Temporary Change in Place of Use and Transfer of 6,000 Acre-Feet of Water - Merced Irrigation District 8/22/11	8/22/11
Order	In the Matter of License 6103 (Application 2318) Petition for Temporary Change Involving the Transfer of 1,000 Acre-Feet of Water to Solano County Water Agency	7/5/11
Order	In the Matter of Permit 16479 (Application 14443) Petition for Temporary Change Involving the Transfer of 800 Acre-Feet of Water to the Musco Olive Products Company.	6/29/11
Order	In the Matter of Permits 12947A, 12949, 12950, And 16596 (Applications 12919A, 15736, 15737, and 19351) of Sonoma County Water Agency - Order Approving Temporary Urgency Change	6/2/11
2011-0012-DWR	In the Matter of Permit 13776 (Application 18115) - U.S. Bureau of Reclamation - Order Approving Temporary Urgency Change	5/4/11
2011-0011-DWR	In the Matter of Petitions for Temporary Urgency Change in Licenses 10191 and 10192 (Applications 8042 and 8043) – City of Los Angeles, Department of Water and Power	5/4/11
2011-0010-DWR	In the Matter of Permit 16481 (Application 14445A) Petition for Temporary Change Involving the Transfer of 10,000 Acre-Feet of Water to Areas within the Westlands Water District. Related Items: CFWU Comments	04/1/11

2010 Order Number	Project Identification	Date of Adoption
2010-0032-DWR Amended 2010-0032-DWR	In the Matter of Permit 16482 (Application 17512) of the California Department of Water Resources and the Specified License and Permits of the United States Bureau of Reclamation, Petition for Temporary Changes Involving the Transfer/Exchange of 220,000 Acre-Feet of Water Related Items: Historical Delivery Data CFWU Comments SBFA Comments Letter 1 Letter 2	11/5/10
2010-0031-DWR	In the matter of Licenses 10191 and 10192 Petitions for Temporary Change	1/4/11

	Involving Variance of Flow Requirements to Decision 1631 and Orders 98-05 and 98-07 to Test New Flow Recommendations and Other Measures Set Forth in the April 30, 2010 Synthesis of Instream Flow Recommendations Report.	
2010-0027-DWR	<p>In the Matter Of License 2033 (Application 16186) Petition for Temporary Change Involving the Transfer of up to 15,000 Acre-Feet of Water from the Merced Irrigation District to Four State Water Contractor Agencies</p> <p>Related Items: Flow Schedule Refill Criteria Refill Report DWR Comments USBR Comments CFWU Comments SEWD Comments</p>	9/2/10
2010-0025-DWR	<p>In the Matter Of Permit 11360 (Application 12622) Petition for Temporary Change Involving the Transfer of up to 4,377 Acre-Feet of Water from the City of Sacramento and Sacramento Suburban Water District to Eight State Water Contractor Agencies</p> <p>Related Items: SGA Comments CWINA Comments CSPA Comments CFWU Comments Petitioner Response</p>	7/2/10
2010-0024-DWR	<p>In the Matter Of License 2840 (Application 10030) Petition for Temporary Change Involving the Transfer of up to 3,520 Acre-Feet of Water from Tule Basin Farms to Eight State Water Contractor Agencies</p> <p>Related Items: CWINA Comments CSPA Comments CFWU Comments Petitioner Response</p>	7/2/10
2010-0023-DWR	<p>In the Matter Of License 2033 (Application 1699) Petition for Temporary Change Involving the Transfer of up to 5,802 Acre-Feet of Water from the Garden Highway Mutual Water Company to Eight State Water Contractor Agencies</p> <p>Related Items: CWINA Comments CSPA Comments CFWU Comments Petitioner Response</p>	7/2/10
2010-0022-DWR	<p>In the Matter Of License 11118 (Application 14804) Petition for Temporary Change Involving the Transfer of up to 10,000 Acre-Feet of Water from the South Sutter Water District to Eight State Water Contractor Agencies</p> <p>Related Items CWINA Comments CSPA Comments Petitioner Response</p>	7/1/10
2010-0017-DWR	<p>In the Matter of Permit 16482 (Application 17512) Petition for Temporary Change Involving the Transfer of 10,000 Acre-Feet of Water to Areas within the Westlands Water District</p> <p>Related Item CFWU Comment Letter</p>	5/5/10

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2009 Order Number	Project Identification	Date of Adoption
2009-0003	In the Matter of Licenses 1405 & 1572 Petitions for Temporary Urgency Changes Involving the Transfer of up to 10,333 acre feet of Water from Reclamation District No. 756 and Delta Farms Reclamation District No. 2026 to the Metropolitan Water District of Southern California.	2/5/09

	Related Actions: License 1405 Petition for Change Cover Letter Attachments: 1 , 2 , 3 , 4 Figures: 1 , 2 , 3 , 4 DWR Letters: 1 , 2 , 3 Bouldin FSA Report Webb FSA Report Depth of Groundwater License 1405 NOE License 1405 NOE Findings License 1572 NOE License 1572 NOE Finding	
2009-0026-DWR	In the Matter of Permit 16482 (Application 17512) Petition for Temporary Change involving the transfer of 8,000 acre feet of water to areas within the Westlands Water District.	4/3/09
2009-0037-DWR	In the Matter of Licenses 1405 & 1572 (Applications 2948 & 2952) Petition for Temporary Change Involving the Transfer of up to 17,941 Acre-feet of water from Reclamation District No. 756 and Delta Farms Reclamation District No. 2026 to the Metropolitan Water District of Southern California under Licenses 1405 & 1572 (Applications 2948 & 2952): Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use	6/23/09
2009-0038-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of Licenses 1718 (Application 575) Petition for Temporary Change Involving the Transfer of up to 3,500 Acre-feet of water from River Garden Farms Company to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use	6/25/09
2009-0040-DWR 2009 Drought Water Bank Pool Allocations CORRECTED 2009-0040-DWR	In the Matter of License 11118 (Application 14804) Petition for Temporary Change Involving the Transfer of up to 10,000 Acre-feet of water from South Sutter Water District to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use.	6/30/09
2009-0041-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of License 2033 (Application 1699) Petition for Temporary Change Involving the Transfer of up to 4,000 Acre-feet of water from Garden Highway Mutual Water Company to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use.	6/30/09
2009-0042-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of License 3067 (Application 1589) Petition for Temporary Change Involving the Transfer of up to 2,805 Acre-feet of water from Reclamation District No. 108 to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use.	6/30/09
2009-0043-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of License 2840 (Application 10030) Petition for Temporary Change Involving the Transfer of up to 2,805 Acre-feet of water from Greg Amaral LTD. Pension Plan and Trust and Tule Basin Farms, LLC to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use.	6/30/09
2009-0044-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of License 8547B (Application 12470B) Petition for Temporary Change Involving the Transfer of up to 1,750 Acre-feet of water from Pelger Mutual Water Company to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use.	6/30/09
2009-0045-DWR 2009 Drought Water	In the Matter of License 3165 (Application 27) Petition for Temporary Change Involving the Transfer of up to 7,220 Acre-feet of water from Reclamation District NO. 1004 to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion,	6/30/09

Bank Pool Allocations	Place of Use, and Purpose of Use.	
2009-0046-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of License 9995 (Application 4901) Petition for Temporary Change Involving the Transfer of up to 2,752.59 Acre-feet of water from Sacramento River Ranch, LLC and Sacramento River Ranch II, LLC to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use.	6/30/09
2009-0047-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of Licenses 6389A, 6389C, 11001, 7064A, AND 7064B (Applications 7641A, 7641C, 15606, 15856A, 15856B) Petition for Temporary Change Involving the Transfer of up to 7,300 Acre-feet of water from Pleasant Grove-Verona Mutual Water Company to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use.	6/30/09
2009-0048-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of License 8267 (Application 3206) Petition for Temporary Change Involving the Transfer of up to 672 Acre-feet of water from DL Goose Farms, LLC to the 2009 Drought Water Bank Administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use.	6/30/09
2009-0051-DWR	In the Matter of Permits 13856 & 13858 (Applications 18085 & 18087) Petition for Temporary Change Involving the Transfer of up to 20,000 acre-feet of water from Placer County Water Agency to the San Diego County Water Authority	7/20/09
2009-0053-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of Permits 13856 & 13858 (Applications 18085 & 18087) Petitions for Temporary Change Involving the Transfer of up to 6,400 acre-feet of water from Placer County Water Agency and the Sacramento Suburban Water District to the 2009 Drought Water Bank administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use	7/30/09
2009-0054-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of Permit 11360 (Application 12622) Petitions for Temporary Change Involving the Transfer of up to 2,902 acre-feet of water from City of Sacramento and Sacramento Suburban Water District to the 2009 Drought Water Bank administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use	8/17/09
2009-0055-DWR 2009 Drought Water Bank Pool Allocations	In the Matter of Permit 11360 (Application 12622) Petitions for Temporary Change Involving the Transfer of up to 667 acre-feet of water from the City of Sacramento to the 2009 Drought Water Bank administered by the Department of Water Resources: Order Authorizing Temporary Change in Points of Diversion, Place of Use, and Purpose of Use	8/26/09
2009-0056-EXEC	In the Matter of Permit 10477 (Application 12842) - North San Joaquin Water Conservation District: Order Approving Temporary Urgency Change - Mokelumme River in San Joaquin County	9/1/09

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2008 Order Number	Project Identification	Date of Adoption
2008-0014 Corrected 2008-0014	In the Matter of Yuba County Water Agency's Petition to Modify Revised Water Right Decision 1644 related to Water Right Permits 15026, 15027, and 15030 (Applications 5632, 15204, and 15574), and Petition for Long-Term Transfer of up to 200,000 acre feet of Water Per Year from Yuba County Water Agency to the Department of Water Resources and the United States Bureau of Reclamation	3/18/08 Corrected 5/20/08

	under Permit 15026 (Application 5632) - Lower Yuba River in Yuba County. Related Order 2008-0025 - Order Correcting Order WR 2008-0014 and Denying Petitions for Reconsideration	
2008-0022-DWR	In the Matter of license 1050 (application 534) petition for temporary change involving the transfer of 598 acre feet of water from the Natomas Central Mutual Water Company to the Sacramento Regional County Sanitation District.	5/5/08
2008-0029-EXEC	In the Matter of Specified Permits of the State Water Project and the Central Valley Project, and Permit 15026 (Application 5632) of Yuba County Water Agency. - Order Approving Temporary Urgency Change in Permit Conditions Regarding the use of Joint Points of Diversion and the Yuba Transfer Related Actions Petition for Reconsideration-SDWA Petition for Reconsideration-CSPA Order 2009-0012 - Order Denying Petitions for Reconsideration	7/1/08
2008-0030-DWR	In the Matter of Permits 1267 and 2492 (Applications 1651 and 2278), Petition for temporary change involving the transfer of up to 10,000 acre feet of water from the South Feather Water and Power Agency to several State Water Contract Agencies. »» Related Item: Refill Report	7/3/08
2008-0031-DWR	In the Matter of Permit 16482 (Applications 17512), Petition for temporary urgency change involving the transfer of up to 4,000 acre feet of water from the California Department of Water Resources to areas with the Westlands Water District	7/3/08
2008-0034-DWR Corrected	In the Matter of License 11118 (Application 14804) Petition for Temporary Change Involving the Transfer of up to 10,000 acre feet of Water From the South Sutter Water District to Several State Water Contract Agencies.	7/28/08 Corrected 7/31/08
2008-0035-DWR Map	In the Matter of License 2652 (Application 2212) Petition for Temporary Urgency Change Involving the Transfer of up to 10,000 acre feet of Water From the United States Bureau of Reclamation's Orland Project to Areas Within the Orland-Artois Water District.	8/8/08
2008-0036-DWR	In the Matter of Permit 21112 (Application 5645B) of El Dorado Irrigation District petition for temporary urgency changes in permit conditions, place of storage and points of rediversion.	8/14/08
2008-0040-DWR	In the matter of Permits 13856 & 13858 (Applications 18085 & 18087) petition for temporary urgency change involving the transfer of up to 20,000 acre feet of water from the Placer County Water Agency to the Westlands Water District	10/24/08
2008-0046-DWR	In the Matter of Permit 16482 (Application 17512) Petition for Temporary Change Involving the Transfer of 100 acre feet to the United States Bureau of Reclamation	12/9/08
2008-0047-DWR	In the Matter of Permit 16482 (Application 17512) Petition for Temporary Change Involving the Transfer of 7,000 acre feet to Areas Within the Westlands Water District	12/16/08

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2007 Order Number	Project Identification	Date of Adoption
2007-0012-DWR	In the Matter of Permit 15026 (Application 5632) Petition for Temporary Change Involving the Transfer of up to 125,000 acre feet of Water from the Yuba County	3/30/2007

	Water Agency to the Department of Water Resources	
2007-0014-DWR	In the matter of Permit 16482 (Application 17512) Petition for Temporary Change involving the transfer of 5,000 acre feet of water to areas within the Westlands Water District under California Department of Water Resources Permit 16482 (Application 17512)	5/7/2007
2007-0015-DWR	In the matter of Permits 12947A, 12949, 12950, AND 16596 (APPLICATIONS 12919A, 15736, 15737, 19351) - Temporary Urgency Change in Permits 12947A, 12949, 12950, AND 16596 of Sonoma County Water Agency	5/10/2007
2007-0019-DWR	In the matter of License 2685 (Application 1224) Merced Irrigation District - Order Approving Temporary Change in Place of Use and Points of Rediversion and Transfer of 25,000 acre feet of water - Merced River in Mariposa and Merced Counties	5/18/2007
2007-0021-DWR	In The Matter Of License 11395 (Application 16186) Merced Irrigation District Order Approving Temporary Urgency Change In Place And Purpose Of Use And 1707 Petition For Dedication Of Water For Instream Use	6/8/2007
2007-0022	In the matter of Permits 12947A, 12949, 12950, and 16596 (Applications 12919A, 15736, 15737, AND 19351) - Temporary Urgency Change in Permits 12947A, 12949, 12950, and 16596 of Sonoma County Water Agency – Dry Creek and Russian River in Mendocino and Sonoma Counties	6/13/2007
2007-0023-DWR	In the matter of License 1050 (Application 534) - Petition for Temporary Change Involving the transfer of 406 acre feet of water from the Natomas Central Mutual Water Company to the Sacramento Regional County Sanitation District	6/15/2007
2007-0024-DWR	In the matter of License 2685 (Application 1224) - Merced Irrigation District - Order Approving Temporary Change in Place of Use and Transfer of 5,000 acre feet - Merced River in Merced and Mariposa Counties	6/2/2007
2007-0026-DWR	In the Matter of License 2637 (Application 5155) Petition for Temporary Change Involving the Transfer of 885.22 acre feet of Water from Island Reclamation District 2062 to Lloyd Phelps and Gary Phelps	7/25/2007

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2006 Order Number	Project Identification	Date of Adoption
2006-0010	In the Matter of Permit 15026 (Application 5632) Petition for Temporary Change Involving the Transfer of up to 125,000 acre feet of Water from the Yuba County Water Agency to the Department of Water Resources	4/10/2006
2006-0012	In the Matter of PERMIT 16482 (APPLICATION 17512) Petition for Temporary Change involving the transfer of 6,000 acre feet of water to areas within the Westlands Water District under California Department of Water Resources PERMIT 16482 (APPLICAITON 17512)	7/3/2006
2006-0014-DWR	In the Matter of the Petition 19400 (Application 25727) Petition for Temporary Change Involving the transfer of up to 1,679 acre feet of water from the Natomas Central Mutual Water Company to the Sacramento Regional County Sanitation District	9/1/2006

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2005 Order Number	Project Identification	Date of Adoption

2005-0009	Order Denying Petition for Temporary Urgency Change of Permits and Licenses of the Department of Water Resources and United States Bureau of Reclamation	2/24/2005
2005-0010	Order Denying Petition for Temporary Urgency Change of Permits 16597, 16600, and 20245 (Applications 14858A, 19304, and 14858B) of the United States Bureau of Reclamation	2/24/2005
2005-0015-DWR	In the Matter of Permit 16482 (Application 17512) Petition for Temporary Change involving the transfer of 6,000 acre feet of water to areas within the Westlands Water District under California Department of Water Resources Permit 16482 (Application 17512)	6/29/2005
2005-0016-DWR	In the Matter of License 7297 (Application 13771) - Petition for Temporary Change Involving the transfer of up to 20 acre feet of water from Pacific Gas and Electric Company to former Geothermal Inc. Landfill	7/0/2005
2005-0020-DWR	In the matter of Permit 16482 (Application 17512) Petition for Temporary Change involving the transfer of 27,000 acre feet of water to areas within the Westlands Water District under California Department of Water Resources Permit 16482 (Application 17512)	7/20/2005
2005-0021-DWR	In the matter of Permit 16482 (Application 17512) Petition for Temporary Change involving the transfer of 20,000 acre feet of water to several Central Valley Wildlife Refuges under California Department of Water Resources Permit 16482 (Application 17512)	8/11/2005
2005-0022-DWR	In The Matter Of License 11058 (Application 14127) Petition for Long Term Transfer involving up to 67,200 acre feet of water per year from the Modesto Irrigation District to the City of Modesto	9/12/2005
2005-0025-DWR	In the Matter of Permit 15025 (Application 5632) Petition for Temporary Change involving the transfer of up to 125,000 acre feet of water from the Yuba County Water Agency to the Department of Water Resources	9/22/2005

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2004 Order Number	Project Identification	Date of Adoption
2004-0005	In the matter of water right Permits 16597 and 16600 (Applications 14858A and 19304) of the United States Bureau of Reclamation - Order Approving Petition for Temporary Urgency Change in Permit Conditions	2/25/2004
2004-0024	In the matter of Permit 15026 (Application 5632) Petition for Temporary Change.	5/3/2004
2004-0028	In the matter of Petition 16482 (Application 17512) Petition for Temporary Change Involving the Transfer of 6,000 acre feet of water to areas within the Westlands Water District under California DWR Permit 16482 (Application 17512)	6/8/2004
2004-0033	In the Matter of the License & Permits of the Central Valley Project & the State Water Project Petition for Temporary Urgency Change in Western Delta Salinity Objectives in Response to the Delta Levee Failure	7/12/2004
2004-0035	Order Approving Temporary Urgency Change In the Matter of Permits 12947A, 12949, 12950, 16596 (Application 12919A, 15736, 15737, 19351) of Sonoma County Water Agency	7/26/2004
2004-0036	In the Matter of Permit 20827 (Application 30159) Southern California Water Company Order Approving Temporary Urgency, Change, Adding a Point of Division	7/26/2004
2004-0037	In The Matter Of Permits 13856 And 13858 (Applications 18085 And 18087) for Petition For Temporary Change Involving The Transfer Of Up To 20,000 Acre Feet	8/4/2004

	Of Water From The Placer County Water Agency To The Department Of Water Resources' Environmental Water Account	
2004-0040	In the Matter of License 9615 (Application 9376), City of Calistoga, Petition for Temporary Urgency Change in Purpose and Place of Use.	9/17/2004
2004-0041	In the matter of license 2685 (application 1224) of Merced Irrigation District - Order approving temporary change in place of use and points of diversion and transfer of 25,000 acre feet of water– Merced River in Mariposa and Merced Counties	9/17/2004
2004-0044	In the Matter of the Permits 1267 and 2492 (Applications 1651 and 2778) Petition for Temporary Change involving the Transfer of up to 10,000 acre feet of water from the South Feather Water and Power Agency to the Bay-Delta Authority's Environmental Water Account.	11/8/2004

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2003 Order Number	Project Identification	Date of Adoption
2003-0008	In the matter of Permit 15026 (Application 5632) – temporary change involving the transfer of up to 200,000 acre feet of water from the Yuba County Water Agency to the Department of Water Resources and Contra Costa Water Agency. Related Order Order WR 2003-0015 - Order Correcting Order WR 2003-0008.	5/5/2003
2003-0010	In the matter of License 1718 (Application 575) et al – Temporary change involving the transfer of up to 57,969 acre feet of water from seven Sacramento River water diverters to the Metropolitan Water District of Southern California with the option to serve the State water Project and Central Valley project service area.	5/13/2003
2003-0012	In the matter of petition for Temporary Change Involving the transfer of up to 3,000 acre feet of water under Licenses 2033 and 4659 (Applications 1699 and 14415) of Garden Highway Mutual Water Company.	6/3/2003
2003-0017	In the matter of permit 16482 (Application 17512) – Petition for temporary change involving the transfers of up to 26,428 acre feet of water from the California Department of Water Resources to Del Puerto Water District, Panoche Water District, San Luis Water District, and Tranquility Irrigation District	9/26/2003

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2002 Order Number	Project Identification	Date of Adoption
2002-05	In the matter of Permit 15026 (Application 5632) of Yuba County Water Agency: Temporary change involving the transfer of up to 162,050 acre feet of water to the Department of Water Resources for the Environmental Water Account and Contra Costa Water District.	6/17/2002
2002-07	In the matter of Permit 16482 (Application 17512) of the California Department of Water Resources: Petition for temporary transfer of up to 5,000 acre feet of water to areas within Westlands Water District.	7/25/2002
2002-09	In the Matter of Permit 16482 (Application 17512) of Department of Water Resources for the temporary transfer of up to 13,000 acre feet to areas within Del Puerto Water District and San Luis Water District.	8/16/2002
2002-10	In the Mater of Statement S015151: Petition for temporary change involving the	9/20/2002

	transfer of up to 1,015 acre feet of water to instream use within the North Fork Tule River under claimed pre-1914 water rights.	
2002-11	In the Matter of Permit 20827 (Application 30159) of Southern California Water Company: Temporary urgency change in point of diversion.	9/30/2002
2002-13 Revised 2002-13 (Revised in accordance with WRO 2002-16)	In the matter of amended joint petition of Imperial Irrigation District and San Diego County Water Authority for approval of a long-term transfer of conserved water pursuant to an agreement between IID and SDCWA, and petition of IID to change the purpose and place of use and the point of diversion under Permit 7643 (Application 7482). Related Order 2002-16 - In the matter of amended joint petition of Imperial Irrigation District and San Diego County Water Authority for approval of a long-term transfer of conserved water pursuant to an agreement between IID and SDCWA, and petition of IID to change the purpose and place of use and the point of diversion under Permit 7643 (Application 7482).	10/28/2002
2002-14	In The Matter of Permits 1267 and 2492 (Applications 1651 and 2778) Petition For Temporary Change Involving the Transfer of up to 10,000 acre feet of Water from Oroville-Wyandotte Irrigation District to The Environmental Water Account.	
2002-15	In the Matter of Statement of Water Diversion and Use S015151 – Petition for Temporary Change involving the transfer of up to 1,015 acre feet of water to instream use within the North Fork Tule River under pre-1914 appropriative water right claim in Tulare County.	

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2001 Order Number	Project Identification	Date of Adoption
2001-03	In the matter of Permit 15026 (Application 5632) of Yuba County Water Agency: Temporary change involving the transfer of up to 50,000 acre feet of water to the Department of Water Resources for the Environmental Water Account.	3/1/2001
2001-09	In the Matter of Permit 16478 (Application 5630) of Department of Water Resources: Temporary urgency change in the point of diversion and rediversion: Sacramento – San Joaquin Delta in Contra Costa County.	6/12/2001
2001-10	In the Matter of Licenses 2814 and 3109 (Applications 1056 and 1203) of Natomas Central Mutual Water Company: Temporary change in place of use and point of diversion involving the transfer of water up to 1,905 acre feet	6/20/2001
2001-11	In the Matter of License 8547A (Application 12470A) of Sutter Mutual Water Company: Temporary change in place of use and point of diversion involving the transfer of water up to 2,454 acre feet	6/20/2001
2001-12	In the Matter of License 3066 (Application 763) of Reclamation District 108: Temporary change in place of use and point of diversion involving the transfer of water up to 5,475 acre feet	6/20/2001
2001-15	In the matter of Permit 16482 (Application 17512) of Department of Water Resources: Temporary change involving the transfer of up to 3,975 acre feet of water to areas within the Westlands Water District.	7/5/2001
2001-16	In the matter of Permit 15026 (Application 5632) of Yuba County Water Agency: Temporary change involving the transfer of up to 114,052 acre feet of water to the Department of Water Resources.	7/16/2001
2001-17	In the Matter of Permit 8649 (Application 13130 and Application 12-1986 of	8/2/2001

	Browns Valley Irrigation District: Temporary change involving the transfer of up to 8,000 acre feet of water to the Department of Water Resources.	
2001-18	In the matter of Permits 13856 and 13858 (Applications 18085 and 18087) of Placer County Water: Temporary change involving the transfer of up to 20,000 acre feet of water to CalFED's / the Department of Water Resources for the Environmental Water Account.	8/2/2001
2001-19	In the Matter of Permit 16482 (Application 17512) of Department of Water Resources: : Temporary change involving the transfer of up to 35,428 acre feet of water to del Puerto Water District, Panoche Water District, San Benito County Water District, San Luis Water District and Tranquility Irrigation District.	8/10/2001
2001-20	In the Matter of Permit 20971 (Application 30396) of Robert Hudson: Temporary urgency change in place of use: Unnamed Stream tributary to Carneros Creek, and Caneros Creek in Napa County.	8/15/2001
2001-21	In the Matter of Permit 20387 (Application 28158): Order approving temporary urgency change in point of diversion: Santa Rosa Creek in San Luis Obispo County.	8/16/2001
2001-25	In the Matter of License 11395 (Application 16186) of Merced Irrigation District: Temporary change involving the transfer of up to 25,000 acre feet of water to CalFED Environmental Water Account.	10/5/2001

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2000 Order Number	Project Identification	Date of Adoption
2000-14	In the Matter of License 11395 (Application 16186); temporary change in place of use involving the transfer of up to 25,000 acre feet of water for the use by U.S. Bureau of Reclamation's Central Valley Project Improvement Act water acquisition program, under Merced Irrigation District's License.	10/19/2000
2000-16	In the Matter of Permits 1267 and 2492 (Application 1651 and 2778): Temporary change involving the transfer of up to 10,000 acre feet of water for use in the Environmental Water Account, under Oroville-Wyandotte Irrigation District's Permits 1267 and 2492.	12/8/2000

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1999 Order Number	Project Identification	Date of Adoption
99-12	In the Matter of Licenses 1050, 2814, 3109, 3110, 9794, and 9989 (Applications 534, 1056, 1203, 1413, 15572, and 22309, Respectively) of NATOMAS CENTRAL MUTUAL WATER COMPANY: Sacramento River in Sacramento and Sutter Counties. 12/28/1999	12/28/1999

(Updated 3/29/13)

The State Water Board is one of five environmental entities operating under the authority of the California Environmental Protection Agency

[Cal/EPA](#) | [ARB](#) | [DPR](#) | [DTSC](#) | [OEHA](#) | [**SWRCB**](#)

Exhibit

B

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2010-0032-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND THE SPECIFIED LICENSE AND PERMITS
OF THE UNITED STATES BUREAU OF RECLAMATION
PETITION FOR TEMPORARY CHANGES
INVOLVING THE TRANSFER/EXCHANGE OF 220,000 ACRE-FEET OF WATER**

ORDER AUTHORIZING TEMPORARY CHANGES IN PLACE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On August 18, 2010,

Department of Water Resources
c/o Nancy Quan, Chief
Program Development and Water Supply and Transfers
P.O. Box 942836
Sacramento, CA 94236-0001

and

United States Bureau of Reclamation
c/o Richard Stevenson, Acting Regional Manager
2800 Cottage Way
Sacramento, CA 95825

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. The petition requests the temporary addition of the Central Valley Project (CVP) place of use “downstream”¹ of the Jones Pumping Plant to Permit 16482 (Application 17512) and the temporary addition of the State Water Project (SWP) place of use “downstream” of the Banks Pumping Plant to the specified permits and license of the CVP (listed in Table 1, shown on page 2 of this Order). These changes are intended to facilitate three specific transfers/ exchanges involving a total of up to 220,000 acre-feet of water. The petition requests the changes be effective through September 30, 2011.

1.1 Description of the Transfer. The SWP and CVP permits and license subject to the proposed changes are listed in Table 1, on the following page. The Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) submitted the petition to more effectively and efficiently utilize the operational flexibility of the combined SWP and CVP facilities and water supply “downstream” of the Banks and Jones Pumping Plants. The petition requests approval for three separate “south-of-Delta”

¹ The petition uses the term “downstream” to identify that portion of the SWP and CVP that is served by water diverted from the Jones and Banks Pumping Plants. These areas are served via a system of canals and holding reservoirs that is within the petitioners’ control. These areas are not within the downstream water supply as defined in Water Code section 1725.

transfers/exchanges of CVP or SWP water. The petition requests that these changes be effective through September 30, 2011. The petitions state that while the total quantity of water pumped by the CVP/SWP from the Delta during this period will not change as a result of these transfers/exchanges, a slightly different ratio of CVP to SWP pumping may occur in 2011. These transfers/exchanges are each summarized in the following sections. The petition is available for viewing online with the public notice for this petition at:

www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

Table 1
SWP and CVP License and Permits Subject to Temporary Change

SWP Water Rights			
Application No.	Permit No.	License No.	Description
17512	16482	n/a	San Luis Reservoir
CVP Water Rights			
Application No.	Permit No.	License No.	Description
23	273	1986	Friant Project
234	11885	n/a	Friant Project
1465	11886	n/a	Friant Project
5626	12721	n/a	Shasta Project
5628	11967	n/a	Trinity Project
5638	11887	n/a	Friant Project
9363	12722	n/a	Shasta Project
9364	12723	n/a	Shasta Project
9368	12727	n/a	Tracy Pumping Plant
13370	11315	n/a	Folsom Project
13371	11316	n/a	Folsom Project
15374	11968	n/a	Trinity Project
15375	11969	n/a	Trinity Project
15376	11970	n/a	Trinity Project
15764	12860	n/a	San Luis Reservoir
16767	11971	n/a	Trinity Project
16768	11972	n/a	Trinity Project
17374	11973	n/a	Trinity Project
17376	12364	n/a	Whiskeytown Lake

1.2 Arvin-Edison/Metropolitan. The Metropolitan Water District of Southern California (MWD) has historically delivered excess SWP supplies to the Arvin Edison Water Storage District (AEWSD) for groundwater banking. MWD has requested the return of this previously-banked groundwater in 2010 and 2011. AEWSD receives CVP supplies from the Friant Reservoir. AEWSD proposes to return some of MWD's previously-banked groundwater by allowing its Friant CVP water to be delivered directly to MWD. A like amount of water within AEWSD's groundwater banking facilities would be reduced from MWD's groundwater banking account (and added to AEWSD's groundwater banking account). The maximum amount of Friant CVP water proposed for delivery to MWD pursuant to this portion of the subject petition is 40,000 af. Water would be delivered via the Friant-Kern Canal and AEWSD's distribution system, including its connections to the California Aqueduct at Milepost 227 (Reach 14C) or via its capacity in the Cross Valley Canal to the California Aqueduct at Tupman/Milepost 238 (Reach 12E).

In the absence of this transfer, AEWSD's Friant CVP water would be diverted to groundwater storage and an equivalent amount of previously-stored SWP water would be pumped from AEWSD's groundwater storage for delivery to MWD.

1.3 Santa Clara Valley Water District. Santa Clara Valley Water District (SCVWD) receives water from both the CVP (delivered from San Luis Reservoir via the CVP's San Felipe Division) and the SWP (delivered via the South Bay Aqueduct). In late 2010 and early 2011 maintenance is scheduled on the San Felipe Division which may constrain its conveyance capacity. The petition requests an exchange of CVP and SWP water to allow for up to 30,000 af of SWP water to be delivered to SCVWD through the South Bay Aqueduct during periods when maintenance is constraining capacity in the San Felipe Division. An equal amount of CVP water will be delivered to the SWP at the O'Neill Forebay for use within the SWP service area south of the Banks Pumping Plant. The proposed exchange would not increase the total amount of CVP/SWP water delivered to SCVWD. In the event the scheduled maintenance does not occur, or conveyance disruptions are not experienced within the next year, SCVWD's CVP water would be delivered directly to SCVWD via the San Felipe Division.

In the absence of this exchange, SCVWD would receive its CVP water via the San Felipe Division or, if scheduled maintenance disrupts conveyance capacity, SCVWD's CVP entitlement would remain in storage in San Luis Reservoir and additional groundwater could be pumped within SCVWD and/or water shortages could occur within SCVWD.

1.4 Westlands/San Luis/Metropolitan. Westlands Water District (WWD) and San Luis Water District (SLWD) each receive their principal water supplies from the CVP. Recent dry conditions and the adoption of Biological Opinions in 2008 and 2009 have significantly reduced the amount of water available for export to SWP and CVP contractors. WWD/SLWD have acquired substantial additional water from other CVP contractors which is currently stored in San Luis Reservoir. Unusual hydrologic conditions in 2010 resulted in an increase in CVP allocations to WWD/SLWD after their users had made planting decisions based on forecasted shortages. As a result, WWD/SLWD have water stored in San Luis Reservoir that will be surplus to their 2010 water needs. If San Luis Reservoir fills during the winter of 2011, the additional water acquired by WWD/SLWD would be reassigned to other CVP contractors. Further, WWD/SLWD believe that their ability to carry over their CVP Water in San Luis Reservoir into the 2011-2012 water year may be limited as well.

In order to reduce the risk that their 2010 CVP water currently stored in San Luis Reservoir will be reassigned to other CVP contractors, WWD/SLWD have proposed an exchange with MWD. WWD/SLWD propose to deliver up to 150,000 af (up to 120,000 af from WWD and up to 30,000 af from SLWD) of their 2010 CVP Water supplies (currently stored in San Luis Reservoir) to MWD. During 2011, MWD would return two-thirds of the total amount of water delivered to WWD/SLWD (up to 80,000 af to WWD and up to 20,000 af to SLWD) from its 2011 SWP Table A supplies. Both exchanges would occur at the O'Neill Forebay. The petitioners submitted a table containing the annual quantities (reported for calendar years) of water exported from the Delta and delivered to WWD and SLWD for the years 2000-2009. These quantities include CVP deliveries and water transfers. The average amount of water delivered to WWD from 2000-2009 is 871,296 af. The average amount of water delivered to SLWD from 2000-2009 is 85,705 af. This Order limits the total amount of Delta exports (including CVP deliveries and water transfers) delivered to WWD and SLWD during the 2011 calendar year to the 2000-2009 averages described above.

In the absence of this exchange, WWD/SLWD's surplus CVP supplies would remain in storage in San Luis Reservoir and MWD would receive all of its 2011 SWP Table A supplies.

2.0 BACKGROUND

2.1 Existing Place of Use. The service area of the SWP is shown on maps 1878-1, 2, 3, & 4 (on file with the State Water Board under Application 5629) and the service area of the CVP is shown on map 214-208-12581 (on file with the State Water Board under Application 5626).

2.2 Place of Use under the Proposed Transfer. The petition requests the temporary addition of the CVP service area “downstream” of the Jones Pumping Plant to the place of use under DWR’s Permit 16482 (Application 17512). The petition also requests the temporary addition of the SWP service area “downstream” of the Banks Pumping Plant to the USBR license and permits listed in Table 1 (shown on page 2 of this notice). These temporary additions would be for the purpose of completing the three transfers/exchanges described above and would be effective from the date the petition is approved through September 30, 2011. The CVP service area “downstream” of the Jones Pumping Plant and the SWP service area “downstream” of the Banks Pumping Plant are shown on maps available for viewing online with the public notice for these petitions at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated September 15, 2010) was provided via first class mail to interested parties and by publication in the Fresno Bee on September 18, 2010. The California Fisheries and Water Unlimited (CFWU) and the State Board of Food and Agriculture (SBFA) submitted timely comments to the proposed temporary change. These comments and the State Water Board’s responses are summarized below.

3.1 Comments of the California Fisheries and Water Unlimited. CFWU’s comments focus on concerns regarding the State Water Board’s findings in previous water transfers. CFWU also referenced its comments regarding previous water transfers.

State Water Board Response: The public notice for this petition requested information specific to findings required for the State Water Board to approve the proposed transfers/exchanges. The State Water Board has reviewed information contained in the petition and other information in its files and made the required findings to approve the proposed transfers/exchanges. These findings are discussed in Section 4.0 of this Order, below.

3.2 Comments of the State Board of Food and Agriculture. SBFA supports the SLWD/WWD/MWD portion of the proposed temporary change. SBFA requests that processing and approval of the petition be expedited.

State Water Board Response: The State Water Board thanks the SBFA for its comments.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, § 1725.) “[C]onsumptively used’ means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” (*Ibid.*) The water proposed for transfer/exchange consists of either:

- a) Water stored pursuant to the specified license and permits of the CVP and SWP; or
- b) Water directly diverted pursuant to the specified license and permits of the CVP and SWP for use outside of the Delta watershed, and thus removed from use in the downstream water supply.

In light of the above, I find in accordance with Water Code section 1726(e) that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) The water proposed for transfer/exchange consists of portions of the CVP entitlements of AEWS, SCVWD, WWD, and SLWD, and the SWP entitlement of MWD. In the absence of the proposed transfers:

- a. AEWS's Friant CVP water would be diverted to groundwater storage and an equivalent amount of previously-stored SWP water would be pumped from AEWS's groundwater storage for delivery to MWD;
- b. SCVWD would receive its CVP water via the San Felipe Division or, if scheduled maintenance disrupts conveyance capacity, SCVWD's CVP entitlement would remain in storage in San Luis Reservoir and additional groundwater could be pumped within SCVWD and/or water shortages could occur within SCVWD; and
- c. WWD/SLWD's surplus CVP supplies would remain in storage in San Luis Reservoir and MWD would receive all of its 2011 SWP Table A supplies.

Since agricultural deliveries to WWD and SLWD have the potential to increase salinity within the San Joaquin River, as a condition of this approval, the amount of water exported from the Delta and delivered to WWD and SLWD in 2011 (including CVP deliveries and other transfers) will be limited to the average annual deliveries for the years 2000 through 2009. Accordingly, the proposed temporary change will not result in a significant increase in salinity in the San Joaquin River above what would be expected to occur as a result of average year operations. In addition, the State Water Board will require as a condition of approval that WWD and SLWD implement all reasonable measures to prevent surface and sub-surface drainage of poor quality water to the San Joaquin River.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) However, the State Water Board must consider potential impacts to fish, wildlife, or other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The petition states that the total quantity of water pumped by the CVP/SWP from the Delta during this period will not change as a result of these transfers/exchanges. Water diverted from the Delta at the Jones or Banks Pumping Plants is subject to the provisions of the CVP and SWP license and permits as amended by State Water Board Decision 1641 and is also subject to the requirements of Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Therefore, the proposed temporary changes would have no significant effect on the natural streamflow or hydrologic regime within the Delta. In addition, as explained above, the temporary changes will not result in a significant increase in agricultural drainage to the San Joaquin River.

In light of the above, I find that in accordance with Water Code section 1727(b)(2), the proposed transfer would have no unreasonable effects on fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary changes will not injure any legal user of the water.
2. The proposed temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfers involve only an amount of water that would have been consumptively used or stored in the absence of the temporary changes.

[illegible]

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the United States Bureau of Reclamation's (USBR) License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973, and 12364 (Applications 23, 234, 1465, 5626, 5628, 5638, 9363, 9364, 9368, 13370, 13371, 15374, 15375, 15376, 15764, 16767, 16768, 17374, and 17376) and the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 220,000 acre-feet (af) of water is approved.

All existing terms and conditions of License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973, 12364, and 16482 remain in effect, except as temporarily amended by the following provisions:

1. The transfers/exchanges are limited to the period commencing on the date of this Order and continuing through September 30, 2011.
2. The place of use under License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973, and 12364 is temporarily expanded to include the portions of the State Water Project (SWP) service area shown on a map prepared by DWR for this transfer titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to CVP Authorized Place of Use* (August 18, 2010), on file with the State Water Board under Application 23.
3. The place of use under Permit 16482 is temporarily expanded to include the portions of the Central Valley Project (CVP) service area shown on a map prepared by DWR for this transfer titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to SWP Authorized Place of Use* (August 18, 2010), on file with the State Water Board under Application 23.
4. Water transferred/exchanged pursuant to this Order shall be limited to the following locations and quantities:
 - a. Up to 40,000 af of CVP water (from the Friant Project) to the Metropolitan Water District of Southern California (MWD);
 - b. Up to 30,000 af of SWP water (exported from the Delta) to the Santa Clara Valley Water District;
 - c. Up to 30,000 af of CVP water (exported from the Delta) to the SWP;
 - d. Up to 150,000 af of CVP water (exported from the Delta) to MWD;
 - e. Up to 80,000 af of SWP water (exported from the Delta) to the Westlands Water District (WWD); and
 - f. Up to 20,000 af of SWP water (exported from the Delta) to the San Luis Water District (SLWD).
5. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. The maximum amount of water exported from the Delta (including CVP deliveries, water transfers, and any other deliveries of water exported from the Delta) and delivered to WWD during the calendar year 2011 shall be 871,296 af. The maximum amount of water exported from the Delta (including CVP deliveries, water transfers, and any other deliveries of water exported from the Delta) and delivered to SLWD during the calendar year 2011 shall be 85,705 af. In addition, WWD and SLWD shall implement all reasonable measures to prevent surface and sub-surface drainage of poor quality water to the San Joaquin River. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.

6. By January 31, 2012, the petitioners shall provide to the Deputy Director for Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall provide a summary of the monthly amounts of water actually transferred under this Order and include the following information:
 - a. The monthly volume of water delivered to MWD, SCVWD, WWD, and SLWD pursuant to this Order; and
 - b. The total amount of water exported from the Delta and delivered to WWD and SLWD for the calendar year 2011. This total shall include CVP deliveries, other water transfers, and any other amount of Delta water each location received.
7. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.
8. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the petitioners shall obtain authorization for an incidental take permit prior to construction or operation. Petitioners shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
9. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

Original signed by

*Barbara L. Evoy, Deputy Director
Division of Water Rights*

Dated: November 5, 2010

Exhibit

C

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2010-0027-DWR

**IN THE MATTER OF LICENSE 11395 (APPLICATION 16186)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 15,000 ACRE-FEET OF WATER
FROM THE MERCED IRRIGATION DISTRICT
TO FOUR STATE WATER CONTRACTOR AGENCIES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF REDIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 3, 2010,

Merced Irrigation District
c/o Marc Van Camp
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95815

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Pursuant to the petition, Merced Irrigation District (MID) seeks to transfer up to 15,000 acre-feet (af) of water to four State Water Contractor Agencies. Water would be used within the State Water Project (SWP) service area. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. MID proposes to transfer up to 15,000 af of stored water under License 11395 (Application 16186) to the Dudley Ridge Water District, the Kern County Water Agency, the Oak Flat Water District, and the Tulare Lake Basin Water Storage District (hereinafter collectively referred to as the Agencies). Water will be released from Lake McClure to the Merced River thence the San Joaquin River to be diverted at the Banks Pumping Plant for delivery to the Agencies. The water is scheduled to be released over a short period in September, 2010, and will coincide with an instream flow study to support relicensing of MID's Merced River Hydroelectric Project. The transfer releases will be calculated as the flow in the Merced River at Cressy minus the required instream flow at that location. The petition states that the final release schedule will be coordinated with the U.S. Fish and Wildlife Service (USFWS) and the Department of Fish and Game (DFG). The petition states that MID is willing to accept refill criteria to ensure that no injury to other legal users of water results from the transfer. A copy of MID's petition is posted online at:

www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/.

In the absence of the proposed change, the 15,000 af of water would remain in storage within Lake McClure.

1.2 Other Agency Consultation. MID submitted to the State Water Board a flow schedule titled *Merced I.D. 2010 Water Transfer – Proposed Flow Schedule*, dated August 13, 2010. This flow schedule describes the expected flows in the Merced River below Merced Falls Dam and at Cressy associated with the proposed temporary change. MID developed the flow schedule in coordination with DFG, USFWS, and National Marine Fisheries Service (NOAA – Fisheries). The schedule includes a description of the hourly flow changes associated with the transfer. The maximum hourly change in flows is 275 cubic feet per second (cfs) as requested by DFG, USFWS, and NOAA – Fisheries. DFG, USFWS, and NOAA – Fisheries approved the flow schedule provided the transfer starts in late August or September, 2010. MID's petition has stated that the latest possible start date (identified on the flow schedule as Day 1) for the proposed transfer is September 15, 2010. The flow schedule is available for viewing online with the copy of this Order at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

1.3 Refill Criteria. The transfer total consists of water currently stored in Lake McClure. MID has developed criteria with the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR), titled *Accounting Procedures For Determining Refill Impacts On The Projects of Merced Irrigation District-State Water Contractors Water Transfer* (Refill Criteria), to ensure that future refill of the reservoir space made available in Lake McClure from this transfer does not adversely impact the SWP or Central Valley Project (CVP). The Refill Criteria provides for an accounting of refill of Lake McClure resulting from the proposed transfer. Pursuant to these criteria, any refill occurring during balanced conditions in the Delta is subject to repayment to DWR and USBR according to a schedule agreed to by MID, DWR, and USBR. The Refill Criteria is available for viewing online with the copy of this Order as described above.

2.0 BACKGROUND

2.1 Substance of MID's License. License 11395 (Application 16186) authorizes the diversion to storage of up to 605,000 af of water from the Merced River between October 1 and July 1. The points of diversion for License 11395 are located at the New Exchequer Dam and the McSwain Dam. The points of rediversion for License 11395 are located at the McSwain Dam, the Merced Falls Diversion Dam, the Crocker-Huffman Diversion Dam, and at Duck Slough. The water is used for irrigation, domestic, recreational, fish culture, and wildlife enhancement purposes within the authorized places of use identified by the "Official map of MID-1973" and additional maps on file with the State Water Board.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant as a point of rediversion to License 11395. The service area of the SWP would also be temporarily added to the place of use under License 11395. The Banks Pumping Plant and SWP service area are identified on Maps 1878-1, 2, 3 & 4 on file with the State Water Board, Division of Water Rights under Application 5629. Municipal, industrial, salinity control, fish and wildlife enhancement, and water quality control would be temporarily added as purposes of use under License 11395.

2.3 OCAP Biological Opinions. The operations of the Banks Pumping Plant are governed by Biological Opinions issued by USFWS and NOAA-Fisheries for the long-term operations of the CVP and the SWP (referred to as OCAP BOs). These BOs were issued in 2008 (USFWS) and 2009 (NOAA-Fisheries) and are based on CALSIM modeling of SWP and CVP operations. The modeling includes up to 600,000 af of water transfers during the period from July 1 through September 30 of each year. Additionally, the Reasonable and Prudent Alternatives (RPAs) contained in the BOs do not include export restrictions during the July 1 through September 30 period (also referred to as the "transfer window"). The total amount of additional pumping due to all water transfers (including the subject transfer) in 2010 is less than the 600,000 af assumed in the modeling performed for the BOs. The start of the subject transfer will

be no later than September 15, 2010, to ensure that the additional pumping at the Banks Pumping Plant associated with the transfer is in conformance with the OCAP BOs.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated June 22, 2010) was provided via first class mail to interested parties and by publication in the Sacramento Bee on June 25, 2010. DWR, California Fisheries and Water Unlimited (CFWU), Stockton East Water District (SEWD), and USBR submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are briefly summarized below. The comments are available for viewing online with this Order at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

3.1 Comments of the Department of Water Resources. DWR objects to the proposed temporary change based on potential injury to its water rights. The proposed temporary change involves the transfer of stored water and has the potential to adversely impact DWR's water rights if refill of the vacated storage space occurs when the Delta is in balanced conditions. MID must work with DWR and USBR to develop acceptable refill criteria. DWR also states that the petitioner must develop an adequate method for determining the quantity of water released from Lake McClure pursuant to the transfer that reaches the Clifton Court Forebay for diversion. DWR states that its objections may be addressed if adequate refill criteria language and an acceptable method for determining the amount of water available for transfer at Clifton Court Forebay are included in any order approving the temporary transfer.

State Water Board Response: As stated in Section 1.3 of this Order, MID has developed the Refill Criteria in concert with DWR and USBR to ensure that the refill of Lake McClure resulting from the proposed temporary change does not adversely impact the SWP or CVP. This Order requires MID to comply with the Refill Criteria. This Order also requires MID to coordinate its transfer releases with USBR to ensure that USBR is not releasing water from Goodwin Dam to meet water quality objectives at Vernalis during the transfer period. Following submission of its comments, DWR reviewed the potential for determining the amount of water available for transfer at Clifton Court Forebay with MID. DWR staff contacted State Water Board staff and stated that this issue is no longer a concern.

3.2 Comments of the California Fisheries and Water Unlimited. CFWU objects to the proposed temporary change. CFWU's comments cite concerns regarding compliance with federal and State Endangered Species Act requirements and impacts to listed species related to the underlying operations of the SWP. CFWU requests that the State Water Board hold a hearing regarding the subject petition and that the State Water Board require MID to prepare a California Environmental Quality Act (CEQA) document for the subject petition.

State Water Board Response: The period for this transfer is within the July 1 through September 30 "transfer window" and therefore the additional pumping at the Banks Pumping Plant is in conformance with the OCAP BOs. Rediversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

The State Water Board has reviewed the information submitted by the petitioner and determined that it is sufficient to make the required findings (described in Section 4.0 of this Order). The State Water Board

will not hold a hearing regarding this petition. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board will not require the petitioner to prepare an environmental document pursuant to CEQA for this petition.

3.3 Comments of the Stockton East Water District. SEWD states that refill of Lake McClure associated with the proposed temporary change has the potential to reduce flow in the San Joaquin River and trigger flow requirements resulting in increased demand from New Melones Reservoir. SEWD notes that “MID is willing to accept refill criteria to ensure that no injury to other legal users of water results from the transfer” and states that provided such criteria are imposed it has no objection to the requested change.

State Water Board Response: This Order requires compliance with the refill criteria developed with DWR and USBR.

3.4 Comments of the United States Bureau of Reclamation. USBR states that the proposed temporary change has the potential to adversely impact CVP operations when USBR is releasing supplemental project water to meet its requirements for the protection of water quality and fish and wildlife. USBR states that it has been working with MID to develop refill criteria to ensure that future refill of the reservoir space made available in Lake McClure from this transfer does not adversely impact the SWP or CVP. USBR requests that the order approving this petition contain the following terms:

- a. Prior to the release of transfer water, Petitioner shall enter into a reservoir refill agreement containing conditions, criteria and procedures that ensure that CVP operations and water rights are not adversely impacted by future refill following the release of transfer water. Implementation of the proposed transfer is subject to that reservoir refill agreement.
- b. During the transfer period, Petitioner shall communicate with USBR and shall coordinate its operations and the timing of releases of transfer water with USBR in order to ensure that USBR is not injured in the event that USBR is releasing water from Goodwin Reservoir to meet water quality objectives at Vernalis.

State Water Board Response:

- a. As stated in Section 1.3 of this Order, MID has developed the Refill Criteria in concert with DWR and USBR to ensure that the refill of Lake McClure resulting from the proposed temporary change does not adversely impact the SWP or CVP. This Order requires MID to comply with the Refill Criteria.
- b. This Order requires MID to communicate with USBR and coordinate its operations and the timing of releases of transfer water with USBR in order to ensure that USBR is not injured by the transfer.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” The water proposed for transfer is currently stored in Lake McClure pursuant to the terms of License 11395. The petition states that in the absence of

the proposed change, the 15,000 af of water proposed for transfer would remain in storage within Lake McClure.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be stored in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) This Order requires MID to comply with the conditions contained in the Refill Criteria to ensure that future refill of the reservoir space made available in Lake McClure from this transfer does not adversely impact the SWP or CVP. This Order also requires MID to coordinate its releases with USBR to ensure that USBR is not releasing water from Goodwin Dam to meet Vernalis water quality requirements.

This Order includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant as a point of rediversion to License 11395.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed temporary change will not injure any legal user of the water.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG, USFWS, and NOAA – Fisheries reviewed MID's proposed flow schedule for this transfer and determined that the release rates are acceptable, provided the ramping up or down of flows from New Exchequer Dam, McSwain Dam, and Merced Falls Diversion Dam are made in increments not to exceed 275 cfs per one hour period. This Order requires MID to release water according to the flow schedule approved by DFG, USFWS, and NOAA – Fisheries and limits ramping up or down to increments not to exceed 275 cfs in any one hour period.

The period for this transfer is within the July 1 through September 30 “transfer window” identified in the OCAP BOs to ensure that the additional pumping at the Banks Pumping Plant is in conformance with the OCAP BOs. Rediversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727, and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

[illegible]

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, purpose of use, and point of redirection under License 11395 (Application 16186) of the Merced Irrigation District (MID) for the transfer of up to 15,000 acre-feet (af) of water is approved.

All existing terms and conditions of License 11395 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing through September 30, 2010.
2. Releases from New Exchequer Dam, McSwain Dam, or Merced Falls Diversion Dam associated with this transfer shall be in accordance with the flow schedule titled *Merced I.D. 2010 Water Transfer – Proposed Flow Schedule*, dated August 13, 2010. The latest start date for the transfer (identified as Day 1 in the Proposed Flow Schedule) is September 15, 2010. Ramping of flows (either up or down) from New Exchequer Dam, McSwain Dam, or Merced Falls Diversion Dam associated with the transfer shall be made in increments not too exceed 275 cubic feet per second (cfs) per one hour period.
3. During the transfer period, MID shall communicate with the United States Bureau of Reclamation (USBR) and shall coordinate its operations and the timing of releases of transfer water with USBR.
4. The place of use under License 11395 is temporarily expanded to include the service areas of the State Water Project (SWP) as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629. Water transferred pursuant to this Order shall only be delivered to the Dudley Ridge Water District, the Kern County Water Agency, the Oak Flat Water District, and the Tulare Lake Basin Water Storage District.
5. The SWP's Banks Pumping Plant is temporarily added as an authorized point of redirection under License 11395. Rediversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Resources Control Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.
6. Municipal and industrial, salinity control, fish and wildlife enhancement, and water quality control uses are temporarily added as purposes of use under License 11395.
7. The criteria titled *Accounting Procedures for Determining Refill Impacts On The Projects of Merced Irrigation District-State Water Contractors Water Transfer* (Refill Criteria) shall govern the conditions under which refill of the water released pursuant to this Order occurs, except that MID shall operate Lake McClure such that water that would otherwise constitute 'Daily Refill Volume', as defined in the Refill Criteria, is not allowed to accrue in Lake McClure and is bypassed during any time when the electrical conductivity (EC) at Vernalis, Brandt Bridge, Old River near Middle River, or Old River at Tracy exceed the requirements set forth in Table 2 of D-1641. MID shall be responsible for knowing when these requirements are exceeded.

At the conclusion of the Refill Period, if a "Cumulative Refill Impact," as defined in the Refill Criteria, has accrued, MID is required to release that amount of water to DWR and USBR. Prior to any such release, MID shall consult with the Department of Fish and Game (DFG), the United States Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NOAA-Fisheries) and receive approval from these agencies for releases and rates of ramping (both up and down) from New Exchequer Dam, McSwain Dam, or Merced Falls Diversion Dam (similar to the approvals obtained for this transfer). MID shall also submit to the Deputy Director for Water Rights the schedule for these releases and a copy of the written approvals from DFG, USFWS, and NOAA-Fisheries at least 10 days prior to commencement of the releases. The approvals from DFG, USFWS, and NOAA – Fisheries must address any additional pumping at either the Central Valley Project's (CVP's) Jones or SWP's Banks Pumping Plants associated with these releases.

8. Within 90 days of the completion of the transfer, but no later than December 1, 2010, MID shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. The quantity of water (in af) delivered to the Dudley Ridge Water District, the Kern County Water Agency, the Oak Flat Water District, and the Tulare Lake Basin Water Storage District pursuant to Condition 4 of this Order;
 - b. The release rates from New Exchequer Dam, McSwain Dam, and Merced Falls Diversion Dam during the transfer period, reported in cfs on an hourly basis; and
 - c. An accounting of the rate at which water was made available for transfer from the Merced River at Cressy. This accounting shall include the difference between the flow rate of the Merced River at Cressy and the required base flow and shall be reported in cfs on an hourly basis throughout the transfer period.

MID shall also provide a report describing its refill of the transferred amount of water pursuant to this Order. The refill report shall be submitted annually on October 1, starting in 2011, until the value of "Cumulative Refill Volume", as defined in the Refill Criteria, equals 15,000 af. The refill reports shall contain the daily values of the "Cumulative Refill Volume" and "Cumulative Refill Impact" and the information contained in items 8.b. and 8.c., above for any releases made by MID consistent with paragraph 7 above to address the Cumulative Refill Impact.

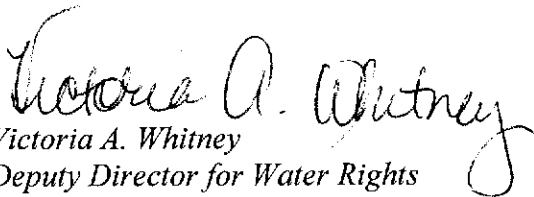
9. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

10. This Order does not authorize any act which results in the take of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this temporary transfer, the Licensee shall obtain authorization for an incidental take permit prior to construction or operation. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.

11. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **SEP 02 2010**

Exhibit

D

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2010-0025-DWR

IN THE MATTER OF PERMIT 11360 (APPLICATION 12622)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 4,377 ACRE FEET OF WATER
FROM CITY OF SACRAMENTO AND
SACRAMENTO SUBURBAN WATER DISTRICT
TO EIGHT STATE WATER CONTRACTOR AGENCIES

ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION/
REDIVERSION, PLACE OF USE, AND PURPOSE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 20, 2010,

City of Sacramento
c/o Joe Robinson, Senior Deputy City Attorney
City Attorney's Office
915 I Street, 4th Floor
Sacramento, CA 95814

and

Sacramento Suburban Water District
c/o Joshua Horowitz
Bartkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816-4907

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Pursuant to the petition, City of Sacramento (City) and Sacramento Suburban Water District (SSWD) seek to transfer up to 4,377 acre-feet (af) of water to eight State Water Contractor Agencies. Water would be used within the State Water Project (SWP) service area. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. SSWD has a long-term water service contract with the City to provide capacity within the City's water diversion and treatment works on the American River and convey the treated surface water to SSWD. SSWD and the City propose to transfer up to 4,377 af of water under Permit 11360 (Application 12622) to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale

Water District, and the San Bernardino Valley Municipal Water District (hereinafter collectively referred to as the Agencies). To facilitate this transfer, SSWD will pump additional groundwater and reduce the amount of water the City directly diverts from the American River by approximately 24 cubic feet per second (cfs). At times when pumping capacity is available in the Delta, the additional flow in the American River thence the Sacramento River would be available for diversion at the SWP's Banks Pumping Plant or the Barker Slough Pumping Plant and delivery to the Agencies. The petition states that the physical transfer of water would occur between July 1 and September 30, 2010, and that the water would be used within the Agencies' service area within a year from the date of approval. A copy of SSWD's petition is posted with the copy of the notice for this transfer on the Division of Water Rights' website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

In the absence of this transfer, up to 4,377 af of water would be diverted by the City and used within SSWD's service area.

1.2 Groundwater Substitution. To provide the 4,377 af of transfer water, SSWD proposes to forgo receipt of up to 4,377 af of surface water that it anticipates would be available during July through September 2010 under an agreement with the City. SSWD would pump groundwater for use by its customers in an amount equivalent to the amount of surface water that it would otherwise receive through this agreement. The Department of Water Resources (DWR) has entered into an agreement with SSWD, titled *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Sacramento Suburban Water District for the Storage and Conveyance of 2010 Transfer Water (Agreement)* for the conveyance of water pursuant to this temporary change. The Agreement includes an 8% (eight percent) 'depletion loss' to protect the SWP and the United States Bureau of Reclamation's (USBR) Central Valley Project (CVP) from injury associated with the transfer. SSWD will only transfer 92% (ninety-two percent) of the total quantity of groundwater pumped. The Agreement also includes a monitoring and reporting plan to address the impacts of additional groundwater pumping within SSWD.

1.3 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioners submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change. State Water Board staff contacted DFG staff in June, 2010 to discuss the proposed temporary change and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff also provided notice of the petition to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). State Water Board staff announced the issuance of the public notice for this petition at the Delta Operations for Salmonids and Sturgeon Group (DOSS) teleconference call on May 18, 2010. NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses.

2.0 BACKGROUND

2.1 Substance of City's Permit. Permit 11360 (Application 12622), issued on May 7, 1958, authorizes the City to divert 500 cubic feet per second (cfs) from Rubicon River, 500 cfs from South Fork Rubicon River, 200 cfs from Rock Bound Creek, 75,000 af per year (afa) by storage collected from Rubicon River, 200,000 afa by storage collected from South Fork Rubicon River, 14,000 afa by storage collected from Rock Bound Creek and 25,000 afa by storage collected from Gerle Creek. The primary points of rediversion under Permit 11360 are the Fairbairn diversion and water treatment plant on the lower American River and the Sacramento River diversion and treatment plant facilities at the confluence of the American and Sacramento Rivers. Permit 11360 authorizes the direct diversion for use and accumulation of water in storage between November 1 of each year and August 1 of the succeeding year. Between August 2 and October 31 of each year, the City rediverts water released from storage for use within its service area. The authorized purpose of use under Permit 11360 is municipal.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant as points of diversion/rediversion to Permit 11360. The service area of the SWP would also be temporarily added to the place of use under Permit 11360. The SWP points of diversion and service area are identified on Maps 1878-1, 2, 3 & 4 on file with the State Water Board Division of Water Rights under Application 5629. Domestic, industrial, irrigation, salinity control, fish and wildlife enhancement, and water quality control would be temporarily added as purposes of use under Permit 11360.

2.3 OCAP Biological Opinions. The operations of the Banks Pumping Plant are governed by Biological Opinions issued by USFWS and NMFS for the long-term operations of the CVP and the SWP (referred to as OCAP BOs). These Biological Opinions were issued in 2008 (USFWS) and 2009 (NMFS) and are based on CALSIM modeling of SWP and CVP operations. The modeling includes up to 600,000 af of water transfers during the period from July 1 through September 30 of each year. Additionally, the Reasonable and Prudent Alternatives (RPAs) contained in the BOs do not include export restrictions during the July 1 through September 30 period. The total amount of additional pumping due to all water transfers (including the subject transfer) in 2010 is less than the 600,000 af assumed in the modeling performed for the BOs. Accordingly, additional pumping at the Banks Pumping Plant associated with the subject transfer between July 1 and September 30, 2010, is in conformance with the OCAP BOs. This Order limits the proposed transfer to the period from July 1 through September 30, 2010.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Prior to issuance of the public notice for this temporary change, the Sacramento Groundwater Authority (SGA) submitted comments regarding the proposed groundwater substitution associated with the transfer. The public notice (dated May 13, 2010) was provided via first class mail to interested parties and by publication in the Sacramento Bee on May 15, 2010. The California Water Impact Network and AquAlliance (CWINA), the California Sportfishing Protection Alliance (CSPA), and the California Fisheries and Water Unlimited (CFWU) submitted timely comments regarding the proposed temporary change. State Water Board staff reviewed these comments and requested that SSWD address the portion of the comments regarding groundwater substitution. These comments, SSWD's additional information, and the State Water Board's responses are briefly summarized below. The comments and SSWD's additional information are also available for viewing online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

3.1 Comments of the Sacramento Groundwater Authority. SGA states that SSWD's 2010 transfer proposal is within the sustainable yield of the North Area Basin. SSWD performed a similar transfer in 2009 and by the Spring of 2010, groundwater elevations had returned to pre-transfer conditions. SGA's comments include information regarding historical (since 1963) groundwater elevations at eleven locations throughout the SGA Area. SGA's comments also include information regarding the average biennial static groundwater elevations near SSWD for the period from October 2003 through October 2008. SGA concludes that SSWD's proposed water transfer is consistent with SGA's long-term groundwater management objectives, which require members to use surface and groundwater conjunctively to enhance water supply reliability and to improve the health and long-term sustainability of the North Area Basin.

State Water Board Response: The State Water Board thanks the SGA for its comments.

3.2 Comments of the California Water Impact Network and AquAlliance. CWINA objects to the proposed temporary change based on the following concerns:

- a. SSWD must demonstrate, not merely assert, that its transfer of surface water will have little to no impact on other parties within or downstream of its service area. CWINA states that the long-term hydrographs contained in SGA's comments show clear long-term declines which the petitioners

(City of Sacramento and Sacramento Suburban Water District) do not acknowledge or explain. CWINA states that the *Sacramento County Water Agency Water Management Plan* indicates that intensive use of the groundwater basin has resulted in general lowering of groundwater elevations, which will require extensive conservation measures to remediate. CWINA recommends that SSWD reduce its use of groundwater, instead of increasing its groundwater pumping to transfer water outside of its service area. CWINA also notes that the proposed groundwater substitution may have third-party impacts.

- b. CWINA notes that SSWD petitioned for a similar temporary change in 2009. CWINA believes that SSWD's one-year transfers in 2009 and 2010 are a long-term transfer and should be subject to the requirements of Water Code section 1735 et seq. CWINA concludes that the proposed temporary change should be subject to the requirements of the California Environmental Quality Act (CEQA). CWINA notes that the CEQA exemption based on the Governor's 2009 declaration of drought conditions was disallowed by the Alameda County Superior Court in March, 2010.
- c. CWINA asserts that the proposed temporary change would have adverse environmental impacts. CWINA states that the impacts of changes in flow timing, water temperatures, and water levels should be reviewed pursuant to CEQA. CWINA also asserts that the proposed temporary addition of the Barker Slough Pumping Plant and the Banks Pumping Plant would result in increased inflow to the Delta without a corresponding increase in Delta Outflow.

State Water Board Responses:

- a. The State Water Board requested additional information from SSWD regarding the issue of groundwater substitution. SSWD reiterated that the SGA implements the Groundwater Management Plan (GMP) for the North Area Basin and that SGA has stated that SSWD's proposed groundwater substitution plan is consistent with the GMP. SSWD's additional information includes the average biennial static groundwater elevations near SSWD for April 2004 through April 2010 (these are updated from the similar information contained in SGA's comments). These average biennial static groundwater elevations show no indication of decline since 2003, including after SSWD's 2009 transfer. SSWD also notes that the long-term hydrographs (referenced by CWINA) show a long-term decline in groundwater elevations that the SGA and its members (including SSWD) have arrested though increased use of surface water. SSWD reiterates SGA's assertion that the additional groundwater pumping associated with the proposed temporary change is within the safe yield of the North Area Basin. SSWD states that the proposed 2010 water transfer will be conducted consistent with the Groundwater and Surface Water Monitoring and Reporting Program and Mitigation Plan (Monitoring Plan) developed cooperatively with DWR. A similar plan was in place for SSWD's previous water transfer, during which no third-party impacts were reported.

Based on this information, the proposed groundwater substitution is consistent with the GMP and thus in conformance with the provisions of Water Code section 1745.10, subdivision (a). This Order requires SSWD to implement the Monitoring Plan to mitigate potential impacts of the proposed groundwater substitution on other legal users of water.

- b. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and WR 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, this order does not rely on a CEQA exemption

contained in the Governor's 2009 Drought Emergency Proclamation.

- c. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion/redirection of water at the Banks Pumping Plant and Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion/redirection of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/redirection, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

3.3 Comments of the California Sportfishing Protection Alliance. CSPA objects to the proposed temporary change based on the following:

- a. CSPA notes that SSWD received approval for a similar temporary change in 2009. CSPA states that SSWD's one-year 2009 and 2010 transfers should not be considered a temporary change and should be subject to the requirements of Water Code section 1735 et seq. CSPA concludes that the proposed temporary change should be considered a long-term transfer subject to the requirements of CEQA, and that the State Water Board should undertake a public trust analysis of Permit 11360.
- b. CSPA states that the State Water Board should not draw conclusions of substance regarding potential impacts of the proposed temporary change based on failure by DFG to comment. CSPA notes that DFG submitted substantial written and oral testimony in the Delta Flow Proceeding conducted by the State Water Board in January through March, 2010 regarding the dire condition of Bay-Delta fisheries, and also submitted extensive recommendations for greatly increased Delta outflow based on an equitable allocation of responsibility.

State Water Board Responses:

- a. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and WR 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, Water Code section 1727, subdivision (d) prohibits the State Water Board from modifying any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change. Water Code section 1727, subdivision (e) prohibits the State Water Board from denying or placing conditions upon a temporary change to mitigate effects that are not caused by the temporary change. Thus, the State Water Board will not undergo a public trust analysis to modify or amend the City's permit, or

place conditions upon this temporary change to mitigate alleged affects of the City's ongoing operations as a condition of approval of the subject petition.

- b. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. DFG's comments on the Delta Flow Criteria Informational Proceeding (Proceeding) address setting flow criteria for the protection of the Delta ecosystem. DFG's recommendations for the Delta Flow Criteria do not address potential impacts of the proposed temporary change. Additionally, the only recommendation submitted by DFG regarding the Proceeding for the time period from July 1 through September 30 is a minimum flow requirement of 6,000 cfs on the Sacramento River. The proposed temporary change will increase flow on the Sacramento River during this time period.

3.4 Comments of the California Fisheries and Water Unlimited. CFWU objects to the proposed temporary change. CFWU's comments cite concerns regarding consultation with DFG, compliance with federal and State Endangered Species Act requirements, and impacts related to the underlying operations of the SWP.

State Water Board Response: As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion/rediversion of water at the Banks Pumping Plant and Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion/rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents the amount of water which would not be available for use in the downstream water supply. DWR has reviewed the transfer proposal and associated groundwater pumping and determined that 8% (eight percent) of the additional groundwater pumping has the potential to affect streamflow. This Order limits the amount of water available for transfer to 92% (ninety-two percent) of the amount of surface water made available at the Fairbairn Water Treatment Plant as a result of this transfer.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of the Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR has reviewed the proposed transfer and determined that, with inclusion of the 8% (eight percent) depletion factor described in Section 1.2 of this Order, the SWP (and CVP) will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The Agreement also includes mitigation and monitoring plans to address the impacts of additional groundwater pumping within SSWD as a result of this transfer. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of the water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant as a point of diversion/rediversion to Permit 11360.

SGA adopted a revised Groundwater Management Plan on December 11, 2008. As referenced in Section 3.1 above, SSWD's proposed water transfer is consistent with SGA's long-term groundwater management objectives, which require members to use surface and groundwater conjunctively to enhance water supply reliability and to improve the health and long-term sustainability of the North Area Basin.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10, subdivision (a). That section requires groundwater use that is part of a groundwater substitution transfer in an area be consistent with a groundwater management plan adopted pursuant to state law for the affected area.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.). However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion/rediversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion/rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint

Diversion/rediversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

6.0 CONCLUSIONS

I conclude that, based on the available evidence:

- [illegible]

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, points of diversion/rediversion, and purpose of use under Permit 11360 (Application 12622) of the City of Sacramento (City) and co-petitioner Sacramento Suburban Water District (SSWD) for the transfer of up to 4,377 acre-feet (af) of water is approved.

All existing terms and conditions of Permit 11360 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the effective date of this Order and continuing through September 30, 2010.
2. SSWD shall implement the monitoring and mitigation plans and reporting requirements contained in Exhibit 1 of the *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Sacramento Suburban Water District for Storage and Conveyance of 2010 Transfer Water* (Agreement) as a condition of transferring water pursuant to this Order.
3. The City shall reduce its diversion rate at the Fairbairn Water Treatment Plant under Permit 11360 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured on a monthly basis). The City shall reduce diversions at Fairbairn Water Treatment Plant on the same pattern as otherwise would have been delivered to its co-petitioner, SSWD, absent the transfer. SSWD shall not take delivery of the surface water made available for purposes of the transfer. The amount of water transferred pursuant to this Order shall not exceed 92% (ninety-two percent) of the rate of reduced diversion at the City's Fairbairn Water Treatment Plant.
4. The place of use under Permit 11360 is temporarily expanded to include the service areas of the State Water Project (SWP) as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629. Water transferred pursuant to this order shall only be delivered to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, or the San Bernardino Valley Municipal Water District, or any combination of the above.
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant are temporarily added as authorized points of diversion/rediversion under Permit 11360.

Diversion/rediversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion/rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

Diversion/rediversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, industrial, irrigation, salinity control, fish and wildlife enhancement, and water quality control are temporarily added as purposes of use under Permit 11360.
7. Within 90 days of the completion of the transfer, but no later than December 31, 2010, SSWD shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The monthly volume of water made available for transfer at the City's Fairbairn Water Treatment Plant pursuant to this Order;
 - c. The monthly volume of water diverted pursuant to Permit 11360 during the transfer period;
 - d. The average daily streamflow measured at the nearest representative gaging station on the American River; and
 - e. Groundwater elevations within the vicinity of SSWD prior to the proposed transfer, as required by Exhibit 1 of the Agreement.

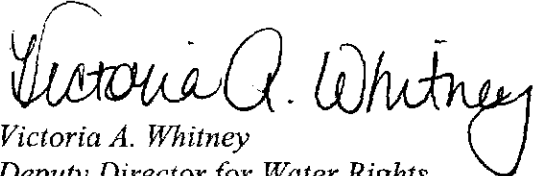
SSWD shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year starting in 2011, a map defining the groundwater elevations within the vicinity of SSWD, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the take of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, Permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney

Deputy Director for Water Rights

Dated: **JUL 02 2010**

Exhibit

E

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterrights.ca.gov>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS

Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION 12622 **PERMIT** 11360 **LICENSE** _____

We, California Water Impact Network and AquAlliance of (C-WIN) P.O. Box 148, Quincy, CA 95971 and (AquAlliance) P.O. Box 4024, Chico, CA 95927 have read carefully a notice relative to a petition for ☒ change or ☐ extension of time under **APPLICATION 12622 of the City of Sacramento** to appropriate water from nine points along Rubicon, American, and Sacramento River systems to eight State Water Contractor agencies (the Dudley Ridge Water District, Kern County Water Agency, Napa County Flood Control and Water Conservation District, the Metropolitan Water District of Southern California, Antelope Valley-East Kern Water Agency, Oak Flat Water District, Palmdale Water District, and the San Bernardino Valley Municipal Water District). It is our understanding this proposed transfer assumes that the petitioner will substitute ground water for surface water. Sacramento Suburban Water District, rather than receive 4,377 acre-feet in 2010 from the City of Sacramento as a “firm capacity” allocation from the City’s diversion from the American River, would instead pump groundwater to supply its customers. The City’s water would instead be rediverted at State Water Project pumping plants in the Delta.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

- | | |
|---|-------------------------------------|
| 1. not be within the State Water Resources Control Board’s jurisdiction | <input type="checkbox"/> |
| 2. not best serve the public interest | <input checked="" type="checkbox"/> |
| 3. be contrary to law | <input checked="" type="checkbox"/> |
| 4. have an adverse environmental impact | <input checked="" type="checkbox"/> |

State facts, which support the foregoing allegations:

C-WIN and AquAlliance protest the City of Sacramento's petition for change of place of use for transfer under Water Code Sections 1330 (actually protesting "an application") and 1726 (f) ("commenting" which must be considered by SWB in deciding the disposition of the short-term transfer change of use petition). Our organizations protest this transfer because we believe it does not serve the public interest, is contrary to the California Water and Public Resources Codes, and would have adverse environmental impacts.

- 1) Transfer is not in the public interest: The City of Sacramento and Sacramento Suburban Water District must demonstrate, not merely assert, that the transfer of surface water will have little to no impact on other parties within or downstream of the District.

The petition fails to disclose probable third party impacts in the area of origin (The City of Sacramento and Sacramento Suburban Water District and its environs) and the area(s) where delivery occurs. Even the California Department of Water Resources acknowledges that all

transfers have the potential to impact third parties (see Unresolved Issues discussion at <http://www.swpao.water.ca.gov/transfers/index.cfm#Unresolved%20Issues>).

Isotopic groundwater data available for other regions should be available for the Sacramento Valley. Such data would be crucial for all concerned to understand potential impacts from the proposed Bureau of Reclamation's 2010-2011 Water Transfer Program. For example, the EA states, "The ... area that could be affected by the proposed action [of water transfers] includes only the 'North Area' bounded on the north and east by the Sacramento County line, by the Sacramento River on the west, and by the American River on the south." (USBR's 2010 EA at p. 34). If this is the area in Sacramento County that is identified as most vulnerable to groundwater impacts, yet two major rivers surround it (the Sacramento and American rivers), shouldn't California Department of Water Resources, the City of Sacramento, and Sacramento Suburban Water District understand the hydrologic relationship between the groundwater basin and the rivers? It is well known that the Sacramento River is already a losing river south of Princeton.

C-WIN and AquAlliance allege that groundwater substitution for surface water transferred by the City of Sacramento and Sacramento Suburban Water District will not improve, and could worsen, this situation. The City of Sacramento proposes to transfer surface water into the state water market and substitute 4,377 acre-feet of groundwater, but the *Sacramento County Water Agency Water Management Plan* indicates that intensive use of this groundwater basin has resulted in a general lowering of groundwater elevations that will require extensive conservation measures to remediate. The Sacramento County Water Agency has devised a plan to help lead the city to a sustainable groundwater use to avoid problems associated with unrestrained overuse. The most reliable strategy is to reduce demand. Integrating the City's water supply into the state water supply would obviously increase demand and make the SCWA goals impossible to achieve. Instead of just the existing supplies of 4,377 acre-feet provided by Sacramento Suburban Water District to its customers with existing surface supplies, the total pressure of demand on water supplies from Sacramento Suburban through the transfer becomes 12,108 acre-feet (obtained by adding the Water District's total 2010 supplies (7,731 acre-feet on page 5, Table 1, of the petition, to the total amount of surface water foregone, 4,377 acre-feet, Table 2).

Sacramento Groundwater Authority's map attached to its letter endorsing the proposed transfer by Sacramento Suburban Water District contains 11 long-term well hydrographs. Of these, five hydrographs show clear long-term declines which the petitioners (City of Sacramento and Sacramento Suburban Water District) do not acknowledge or explain. Two of these hydrographs show significant long-term declines in groundwater elevations from 40 to 70 feet over several decades. Other hydrographs appear to indicate declines in groundwater elevations of about 10 feet over several decades. While the Groundwater Authority endorses this transfer, neither the Authority nor the petitioners show how the substantial historical overdraft in these wells (Nos. SWP-276, SWP-270, SWP-232, SWP-229, and SWP-240) would be affected by proposed transfer, and merely assert that since last year's 2009 Drought Water Bank transfer (on which, as of this writing, the City and the District have failed to report to the State Water Board as required by the State Water Board's Water Rights Order 2009-0054-DWR, condition 7).

2) Transfer is contrary to law.

- a. California Water Code Section 1725. Transfers by The City of Sacramento and Sacramento Suburban Water District with the same terms, timing of release, transfer amounts, additional purposes of use, and proposed new users have occurred serially since 2008, as shown in the table below.

Cumulating Petitions for Temporary Changes

Year of Petition	Application Number	Applicant/ Water Right Holder	Average Diversion Rate of Transfer (cfs)	Changed Point of Rediversion	Changed Place of Use	Changed Purpose of Use	Proposed New User(s)	Transfer Amount	Term of Transfer	Timing of Releases
2009	12622	Sacramento Suburban Water District and City of Sacramento	Set by agreement between City of Sacramento and DWR, subject to "Hodge" flow criteria for American River	Banks PP and Barker Slough PP, Jones PP, Contra Costa Canal	Service areas of the Central Valley Project(Application 5626) and State Water Project (Application 5630)	Addition of irrigation	Water users within the places of use of the CVP and SWP, facilitated through the Drought Water Bank.	up to 2,902 AF	August 17, 2009 to September 30, 2009	August 17, 2009 to September 30, 2009
2010	12622	Sacramento Suburban Water District and City of Sacramento	up to 24 cfs, July 1 through September 30, 2010	Banks PP and Barker Slough PP	Service area of the State Water Project (Application 5630)	Addition of irrigation	Dudley Ridge WD, Kern County Water Agency, Napa County Flood Control & WCD; MWDSC; San Bernardino Valley MWD; Antelope Valley East Kern WA; Palmdale WD; Oak Flat WD	up to 4,377 AF	July 1, 2010 - June 30, 2011	July 1 to September 30, 2010

C-WIN and AquAlliance believe that the proposed 2010 water transfer by the City of Sacramento and Sacramento Suburban Water District is evidence of a long-term water transfer to the State Water Project that masquerades as a series of short-term, temporary transfers. Water Code Section 1735 states: "The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year." The sequence of transfers undertaken by the City of Sacramento and Sacramento Suburban Water District shown above indicates that by approving a temporary change petition from the City of Sacramento in 2010, the State Water Board would fail to recognize that the City is actually engaging in a long-term transfer that should be the subject of a petition under Section 1735, in violation of the intent of the short-term transfer provision of Water Code Section 1725. This is a reasonable presumption because currently the State Water Project's storage capacity, despite a wet winter in 2010, remains well below capacity because of other priorities for flows from the Feather River. Department of Water Resources meteorologists and planners have stated publicly that it will take at least another year or two for Lake Oroville to fill from winter snowmelt and runoff. Petitioners should acknowledge these existing conditions as context for their proposed transfer. Petitioners do acknowledge that they proposed up to 6,000 acre-feet and actually transferred up to 2,902 acre-feet to the 2009 Drought Water Bank. These transfers, while nominally legal, add up to a consistent pattern of nearly identical transfers from the same seller's facilities to the same changed points of rediversion (State Water Project pumping and conveyance facilities) to nearly identical customers. The proposed 2010 transfer includes eight state water contractors that are identified as transfer recipients in 2009, and four (Metropolitan, Kern County Water Agency, Napa County Flood Control and Water Conservation District, and San Bernardino Valley Municipal Water District) appear among the 2009 Drought Water Bank pool of transfer recipients a year ago. (As noted earlier, the City and Sacramento

Suburban Water District have yet to submit their transfer completion report required under condition 7 of Water Rights Order 2009-0054-DWR, so it is not yet publicly known as of this writing which state water contractors actually received the City of Sacramento's water.) Finally, the CEQA exemption for the 2009 Drought Water Bank based on a declaration of drought emergency by the Governor was disallowed by Alameda County Superior Court in March 2010, and the remedy includes a requirement that DWR prepare an environmental review of the 2009 Drought Water Bank transfers. We are also aware that DWR and the US Bureau of Reclamation plan a "water transfer program" for 2010 through 2011 (and which is modeled on the 2009 Drought Water Bank which was successfully challenged), so it is a reasonable presumption that the City of Sacramento and Sacramento Suburban Water District are likely to prepare another short-term transfer petition to provide water to this water transfer program. We urge the State Water Board to reject the short-term water transfer petition and advise the petitioner to file a long-term transfer petition instead.

b. The proposed transfer would be contrary to the California Environmental Quality Act.

Following on the reasoning with respect to the Water Code, C-WIN and AquAlliance allege that the proposed short-term transfer by the City of Sacramento and Sacramento Suburban Water District to the State Water Project contractors would represent another increment of a "project" that is exempted from CEQA improperly. We believe that, unlike in the case of *Sierra Club v. The West Side Irrigation District* (2005), the current transfer should be treated as a long-term transfer (one that represents a transfer of water recurring over a period greater than one year), and is subject to CEQA review. The City of Sacramento's proposed and actual transfers in 2009 and 2010 constitute a single project put forward by a single independent agency; environmental review has been evaded because these transfers were filed incrementally as temporary short-term petitions; only a single water right (application 12622) is involved; each incremental petition would be for similar "up to" amounts to be transferred (2,900 and 4,377 acre-feet); and the petitions have essentially the same terms, identified in the table above. In addition, with vacation of the CEQA exemption on the 2009 Drought Water Bank, there really is no programmatic coverage under CEQA for transfers like this. Cumulative effects of this and other transfers have been poorly handled or not examined at all. We believe this would represent an abuse of the State Water Board's discretion to approve this project as a short-term temporary transfer, and would violate the California Environmental Quality Act, which requires that projects be treated as "the whole of an action," and that the environmental effects of the action should be fully disclosed to the public prior to its conduct.

Individual, if serial, transfers, such as the City of Sacramento and Sacramento Suburban Water District's, confirms for C-WIN and AquAlliance the desperate need for the California Department of Water Resources to collaborate with the State Water Resources Control Board (as the steward of California's public trust resources) to undertake a systematic programmatic environmental review under CEQA of water transfer programs that would transfer water from Sacramento Valley sources across the Delta to San Joaquin Valley and southern California users. This is necessary to gain a greater understanding of the "whole" of the actions involved in water transfers and their incremental, cumulative, and perhaps growth-inducing effects.

3) The proposed transfer would have adverse environmental impacts.

- a. The petitioner requests approval for a year-long transfer when fisheries problems in the Sacramento River continue year-round. Water temperature, flow timing (particularly with respect to attraction flows), and water level issues have been identified by the petitioner and with two previous years of nearly identical transfer activity, these fishery issues need CEQA review under the aegis of a long-term transfer petition.
- b. Cumulative effects of lost Delta outflows. The City of Sacramento would add Banks Pumping Plant and Barker Slough Pumping Plant to its points of diversion under this petition. C-WIN and AquAlliance protest these proposed diversion points because the transfer generates inflows to the Delta, but no net outflows to Suisun Bay, Suisun Marsh, and San Francisco Bay. Instead, the transfer is "accounted for" as water that proceeds through the Delta Cross Channel, and contributes to the reverse flows in Old and Middle River that contribute to fish entrainment at Banks Pumping Plant, before being exported to the recipients of the water south of the Delta. However small a contribution these transfer water flows make on a percentage basis to Delta inflow, they are nonetheless cumulatively subtracted from Delta outflows. Loss of Delta outflow means that the low salinity zone in the Delta is smaller than it would otherwise be, and therefore critical habitat for estuarine species, including striped bass young of the year and Delta smelt, may be adversely affected by increased density-dependence relationships.

These and other cumulative effects must be disclosed and analyzed on individual bases and as part of a programmatic environmental review under the California Environmental Quality Act to ensure all significant environmental effects of cumulating are taken into account.

- c. There may be habitat conservation plans and natural community conservation plans in the vicinity of transfer flows that could be affected by the proposed transfer.

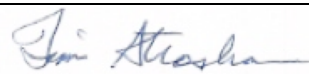
4) Conclusion

C-WIN and AquAlliance urge the State Water Board that the requested transfer should be denied as a temporary transfer under Section 1725 of the Water Code. As a long-term transfer under Section 1735 of the Water Code, the proposed transfer should be analyzed under CEQA. The CEQA analysis should evaluate cumulative effects, not merely incremental effects.

Under what conditions may this protest be disregarded and dismissed? Not known at this time.

A true copy of this protest has been served upon the petitioner The City of Sacramento and Sacramento Suburban Water District, c/o Joshua Horowitz, Barkiewicz, Kronick, & Shanahan, Sacramento, CA 95816-4907

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Protests MUST be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.

Proof of Service

I hereby certify that on this day, June 11, 2010, I, Tim Stroshane, have placed in first class mail at Albany, California, a true copy of this comment letter mailed to:

**Sacramento Suburban Water District
c/o Joshua Horowitz
Barkiewicz, Kronick, & Shanahan
1011 22nd Street
Sacramento, CA 95816-4907**

AND

**City of Sacramento
Joe Robinson, Sr., Deputy City Attorney
City Attorney's Office
915 I Street, 4th Floor
Sacramento, CA 95814**

A handwritten signature in blue ink, appearing to read "Tim Stroshane", is positioned above a horizontal line.

Tim Stroshane

Exhibit

F

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2010-0024-DWR

IN THE MATTER OF LICENSE 2840 (APPLICATION 10030)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 3,520 ACRE-FEET OF WATER
FROM TULE BASIN FARMS
TO EIGHT STATE WATER CONTRACTOR AGENCIES

ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 14, 2010

Tule Basin Farms
c/o Marc Van Camp
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95815

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Tule Basin Farms' (TBF) petition requests the transfer of up to 3,520 acre-feet (af) of water to eight State Water Contractor Agencies. Water would be used within the State Water Project (SWP) service area. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. TBF proposes to transfer up to 3,520 af of water under License 2840 (Application 10030) to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, and the San Bernardino Valley Municipal Water District (hereinafter collectively referred to as the Agencies). To facilitate this transfer, TBF will pump additional groundwater and reduce its direct diversion from the West Borrow Pit of the Sutter Bypass by 21 cubic feet per second (cfs). At times when pumping capacity is available in the Delta, the additional flow in the West Borrow Pit of the Sutter Bypass thence the Sacramento River would be available for diversion at the SWP's Banks Pumping Plant or Barker Slough Pumping Plant and delivery to the Agencies. The petition requests that the change be effective from July 1 through September 30, 2010.

In the absence of the proposed change, TBF would divert the quantity of water proposed for transfer from the West Borrow Pit of the Sutter Bypass pursuant to License 2840.

1.2 Groundwater Substitution. TBF's petition states that detailed information relative to historical groundwater pumping, well characteristics, and associated maps has been submitted to the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) for review. DWR has entered into an agreement with TBF, titled *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Tule Basin Farms, LLC for the Storage and Conveyance of 2010 Transfer Water* (Agreement) for the conveyance of water pursuant to this temporary change. The Agreement includes a 12% (twelve percent) 'depletion loss' to protect the SWP and USBR's Central Valley Project (CVP) from injury associated with the transfer. TBF will only transfer 88% (eight-eight percent) of the total quantity of groundwater pumped. The Agreement also includes a monitoring and reporting plan to address the impacts of additional groundwater pumping within TBF. A copy of TBF's petition is posted with the copy of the notice for this transfer on the Division of Water Rights' website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change. State Water Board staff contacted DFG staff in June, 2010 to discuss the proposed temporary change and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff also provided notice of the petition to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). State Water Board staff announced the issuance of the public notice for this petition at the Delta Operations for Salmonids and Sturgeon Group (DOSS) teleconference call on May 18, 2010. NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses.

2.0 BACKGROUND

2.1 Substance of TBF's License. License 2840 (Application 10030) authorizes the direct diversion of up to 21.05 cfs of water per annum from the West Borrow Pit of Sutter Bypass between April 1 and November 1 of each year for irrigation purposes. The authorized point of diversion for License 2840 is located on the West Borrow Pit of the Sutter Bypass, North 950 feet and West 275 feet from the Southeast corner of Section 5, T14N, R2E, MDB&M. The authorized place of use consists of 842.13 acres within the North Basin Tract.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant as points of diversion to License 2840. The service area of the SWP would also be temporarily added to the place of use under License 2840. The SWP points of diversion and service area are identified on Maps 1878-1, 2, 3 & 4 on file with the State Water Board Division of Water Rights under Application 5629. Domestic, municipal and industrial, salinity control, fish and wildlife enhancement, and water quality control would be temporarily added as purposes of use under License 2840.

2.3 OCAP Biological Opinions. The operations of the Banks Pumping Plant are governed by Biological Opinions issued by USFWS and NMFS for the long-term operations of the CVP and the SWP (referred to as OCAP BOs). These Biological Opinions were issued in 2008 (USFWS) and 2009 (NMFS) and are based on CALSIM modeling of SWP and CVP operations. The modeling includes up to 600,000 af of water transfers during the period from July 1 through September 30 of each year. Additionally, the Reasonable and Prudent Alternatives (RPAs) contained in the BOs do not include export restrictions during the July 1 through September 30 period. The total amount of additional pumping due to all water transfers (including the subject transfer) in 2010 is less than the 600,000 af assumed in the modeling performed for the BOs. Accordingly, additional pumping at the Banks Pumping Plant associated with the subject transfer between July 1 and September 30, 2010, is in conformance with the OCAP BOs. This Order limits the proposed transfer to the period from July 1 through September 30, 2010.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 13, 2010) was provided via first class mail to interested parties and by publication in the Sacramento Bee on May 15, 2010. The California Water Impact Network and AquAlliance (CWINA), the California Sportfishing Protection Alliance (CSPA), and the California Fisheries and Water Unlimited (CFWU) submitted timely comments regarding the proposed temporary change. State Water Board staff reviewed these comments and requested that TBF address the portion of the comments regarding groundwater substitution. These comments, TBF's additional information, and the State Water Board's responses are briefly summarized below. The comments and TBF's additional information are also available for viewing online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

3.1 Comments of the California Water Impact Network and AquAlliance. CWINA objects to the proposed temporary change based on the following concerns:

- a. TBF must demonstrate, not merely assert, that its transfer of surface water will have little to no impact on other parties within or downstream of its service area. CWINA states that since there is no approved groundwater management plan for TBF's service area, TBF must determine that the proposed groundwater substitution will not create or contribute to long-term overdraft in the affected groundwater basin. CWINA asserts that TBF has not provided sufficient analysis to make this determination. CWINA also notes that the proposed groundwater substitution may have third-party impacts.
- b. The petition does not provide an accounting of evaporative loss of water from TBF's service area from July through September, as well as how much additional groundwater will be pumped to 'make up' for these evaporative losses.
- c. CWINA notes that TBF petitioned for a similar temporary change in 2009. CWINA believes that TBF's one-year transfers in 2009 and 2010 are a long-term transfer and should be subject to the requirements of Water Code section 1735 et seq. CWINA concludes that the proposed temporary change should be subject to the requirements of the California Environmental Quality Act (CEQA). CWINA notes that the CEQA exemption based on the Governor's 2009 declaration of drought conditions was disallowed by the Alameda County Superior Court in March, 2010.
- d. CWINA asserts that the proposed temporary change would have adverse environmental impacts. CWINA states that the impacts of changes in flow timing, water temperatures, and water levels should be reviewed pursuant to CEQA. CWINA also asserts that the proposed temporary addition of the Barker Slough Pumping Plant and the Banks Pumping Plant would result in increased inflow to the Delta without a corresponding increase in Delta Outflow.

State Water Board Responses:

- a. The State Water Board requested additional information from TBF regarding the issue of groundwater substitution. TBF states that while Sutter County is in the process of preparing a groundwater management plan, it has yet to be completed due to funding issues. TBF states that it does not believe the proposed temporary transfer will result in an overdraft of the underlying basin. TBF presented information regarding historical groundwater elevations showing that 2007 groundwater elevations within the portion of Sutter County are approximately 10 feet above 1912-1913 groundwater elevations. Additionally, TBF submitted information regarding historic (1962-2010) groundwater elevations at a monitoring well within approximately 2 miles of TBF. This information shows that groundwater elevations near TBF have fluctuated on a seasonal basis with the fluctuations increasing during dry years, however, these groundwater elevations have remained relatively stable during this 49-year period. TBF states that this information shows

that its groundwater basin is not in a state of overdraft. TBF also states that the proposed 2010 water transfer will be conducted consistent with the Groundwater and Surface Water Monitoring and Reporting Program and Mitigation Plan (Monitoring Plan) developed cooperatively with DWR. A similar plan was in place for TBF's previous water transfer, during which no third-party impacts were reported.

Based on this information, the proposed groundwater substitution will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin and thus is in conformance with the provisions of Water Code section 1745.10, subdivision (b). This Order requires TBF to implement the Monitoring Plan to mitigate potential impacts of the proposed groundwater substitution on other legal users of water.

- b. The proposed temporary change involves the pumping of additional groundwater to make up for forgone surface water diversions. The proposed temporary change will not result in a change in cropping patterns or irrigation methods. Accordingly, evaporation from TBF's service area will not change as a result of the proposed temporary change.
- c. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, this order does not rely on a CEQA exemption contained in the Governor's 2009 Drought Emergency Proclamation.
- d. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion of water at the Banks Pumping Plant and Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA objects to the proposed temporary change based on the following:

- a. CSPA notes that TBF received approval for a similar temporary change in 2009. CSPA states that TBF's one-year 2009 and 2010 transfers should not be considered a temporary change and should be subject to the requirements of Water Code section 1735 et seq. CSPA concludes that the proposed temporary change should be considered a long-term transfer subject to the requirements of CEQA, and that the State Water Board should undertake a public trust analysis of License 2840.

- b. CSPA states that there is no adopted groundwater management plan for Sutter County. CSPA alleges that TBF has not shown that the groundwater substitution associated with the proposed temporary change will not contribute to conditions of groundwater overdraft. TBF should be required to provide an analysis that demonstrates that its proposed transfer would take place from a location where long-term groundwater overdraft does not exist.
- c. CSPA states that the State Water Board should not draw conclusions of substance regarding potential impacts of the proposed temporary change based on failure by DFG to comment. CSPA notes that DFG submitted substantial written and oral testimony in the Delta Flow Proceeding conducted by the State Water Board in January through March, 2010 regarding the dire condition of Bay-Delta fisheries, and also submitted extensive recommendations for greatly increased Delta outflow based on an equitable allocation of responsibility.

State Water Board Responses:

- a. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, Water Code section 1727, subdivision (d) prohibits the State Water Board from modifying any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change. Water Code section 1727, subdivision (e) prohibits the State Water Board from denying or placing conditions upon a temporary change to mitigate effects that are not caused by the temporary change. Thus, the State Water Board will not undergo a public trust analysis to modify or amend TBF's license, or place conditions upon this temporary change to mitigate alleged effects of TBF's ongoing operations as a condition of approval of the subject petition.
- b. See the State Water Board response to CWINA in 3.1a., above.
- c. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. DFG's comments on the Delta Flow Criteria Informational Proceeding (Proceeding) address setting flow criteria for the protection of the Delta ecosystem. DFG's recommendations for the Delta Flow Criteria do not address potential impacts of the proposed temporary change. Additionally, the only recommendation submitted by DFG regarding the Proceeding for the time period from July 1 through September 30 is a minimum flow requirement of 6,000 cfs on the Sacramento River. The proposed temporary change will increase flow on the Sacramento River during this time period.

3.3 Comments of the California Fisheries and Water Unlimited. CFWU objects to the proposed temporary change. CFWU's comments cite concerns regarding consultation with DFG, compliance with federal and State Endangered Species Act requirements, and impacts related to the underlying operations of the SWP.

State Water Board Response: As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS

and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion of water at the Banks Pumping Plant and Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents the amount of water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% (twelve percent) of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% (eighty-eight percent of the groundwater pumped).

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of the Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR has reviewed the proposed transfer and determined that, with inclusion of the 12% (twelve percent) depletion factor described in Section 1.2 of this Order, the SWP (and CVP) will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The Agreement also includes a monitoring and reporting plan to address the impacts of additional groundwater pumping within TBF as a result of this transfer. This Order requires compliance with this portion of the Agreement.

This Order also includes terms and conditions to ensure that other legal users of the water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant as a point of diversion to License 2840.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code

section 1745.10, subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area, and requires the water supplier determine that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

Diversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream

beneficial uses.

3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

[illegible]

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, points of diversion, and purpose of use under License 2840 (Application 10030) of Tule Basin Farms (TBF) for the transfer of up to 3,520 acre-feet of water is approved.

All existing terms and conditions of License 2840 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2010 and continuing through September 30, 2010.
2. TBF shall implement the monitoring and reporting plans contained in Exhibit 1 of the *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Tule Basin Farms, LLC for Storage and Conveyance of 2010 Transfer Water* (Agreement) as a condition of transferring water pursuant to this Order.
3. TBF shall reduce its diversion rate at the original points of diversion authorized under License 2840 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping. The rate of additional groundwater pumped in order to make water available for transfer shall not exceed 21 cubic feet per second.
4. The place of use under License 2840 is temporarily expanded to include the service areas of the State Water Project (SWP) as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629. Water transferred pursuant to this Order shall only be delivered to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, or the San Bernardino Valley Municipal Water District, or any combination of the above.
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant are temporarily added as authorized points of diversion under License 2840.

Diversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

Diversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal and industrial, salinity control, fish and wildlife enhancement, and water quality control are temporarily added as purposes of use under License 2840.

7. Within 90 days of the completion of the transfer, but no later than December 31, 2010, TBF shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
- General locations where the transferred water was used;
 - The daily average rate water was made available for transfer pursuant to this Order;
 - The daily average diversion rate for water diverted pursuant to License 2840 during the transfer period;
 - The average daily streamflow measured at the nearest representative gaging station on the West Borrow Pit of the Sutter Bypass;
 - The daily average pumping rate of groundwater pumped by TBF in excess of that which would have been pumped in the absence of this transfer; and
 - Groundwater elevations within the vicinity of TBF prior to the proposed transfer, as required in Exhibit 1 of the Agreement.

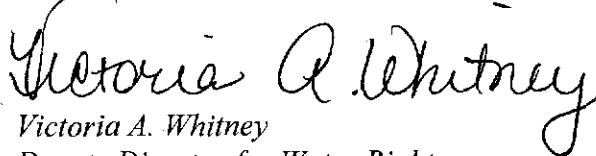
TBF shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2010, a map defining the groundwater elevations within the vicinity of TBF, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the take of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: JUL 02 2010

Exhibit

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State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterrights.ca.gov>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS
Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION 10030 **PERMIT** 5714 **LICENSE** 2840

We, California Water Impact Network and AquAlliance of (C-WIN) P.O. Box 148, Quincy, CA 95971 and (AquAlliance) P.O. Box 4024, Chico, CA 95927 have read carefully a notice relative to a petition for ☒ change or ☐ extension of time under **APPLICATION 10030 of Tule Basin Farms (Giusti Ranch)** to divert up to 3,520 acre-feet (at a rate of up to 21 cubic feet per second) from its point at North 950 feet and West 275 feet from SE corner of Section 5, T14N, R2E, for transfer between July 1, 2010, to June 30, 2011, to eight State Water Contractor agencies (the Dudley Ridge Water District, Kern County Water Agency, Napa County Flood Control and Water Conservation District, the Metropolitan Water District of Southern California, Antelope Valley-East Kern Water Agency, Oak Flat Water District, Palmdale Water District, and the San Bernardino Valley Municipal Water District). It is our understanding this proposed transfer assumes that the petitioner will substitute groundwater for surface water.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

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State facts, which support the foregoing allegations:

C-WIN and AquAlliance protest and comment on Tule Basin Farms (Giusti Ranch)'s petition for change of place of use for transfer under Water Code Sections 1330 (actually protesting "an application") and 1726(f) ("commenting" which must be considered by SWB in deciding the disposition of the short-term transfer change of use petition). Our organizations protest this transfer because we believe it does not serve the public interest, is contrary to the California Water and Public Resources Codes, and would have adverse environmental impacts.

- 1) Transfer is not in the public interest: Tule Basin Farms (Giusti Ranch)'s proposed transfer of surface water to eight State Water Project contractors (as cited in the petition dated April 14, 2010) is not in the public interest. Since some groundwater substitution will occur, the transferor, Tule Basin Farms (Giusti Ranch), must demonstrate, not merely assert, that the transfer of surface water from the district will have little to no impact on other parties within or downstream of the District.

Removal of surface water supplies that offset demand for groundwater pumping is not in the public interest since application of the surface water under existing rights (absent the transfer) could instead help raise groundwater elevations under Tule Basin's lands. Other landowners in

this area who may have to cope with lowered groundwater elevations. Their increased costs of pumping could have adverse effects on the local economy that go unexamined by the petitioner.

The petition fails to disclose probable third party impacts in the area of origin (Tule Basin Farms (Giusti Ranch) and its environs) and the area(s) where delivery occurs. Even DWR acknowledges that all transfers have the potential to impact third parties (see Unresolved Issues <http://www.swpao.water.ca.gov/transfers/index.cfm#Unresolved%20Issues>).

Evaporation of water will occur from the ground surface of the District's irrigated lands during July through September, to the extent that rice fields or other crops in Tule Basin Farms (Giusti Ranch) lands are flood-irrigated. The District's petition for temporary transfer provides no accounting of this evaporative loss and how much additional groundwater individual landowners in the vicinity would need to pump to recover it.

2) Transfer is contrary to law.

- a. Water Code Section 1725. Transfers by Tule Basin Farms (Giusti Ranch) with nearly identical terms, timing of release, transfer amounts, additional purposes of use, and proposed new users have occurred serially since 2009, as shown in the table below.

Cumulating Petitions for Temporary Changes

Year of Petition	Application Number	Applicant/ Water Right Holder	Average Diversion Rate of Transfer (cfs)	Changed Point of Rediversion	Changed Place of Use	Changed Purpose of Use	Proposed New User(s)	Transfer Amount	Term of Transfer	Timing of Releases
2009	10030	Giusti Ranch (Greg Amaral and Tule Basin Farms)	21	Banks PP and Barker Slough PP, Jones PP, Contra Costa Canal	Service areas of the Central Valley Project(Application 5626) and State Water Project (Application 5630)	Addition of domestic, municipal, and industrial uses	Water users within the places of use of the CVP and SWP, facilitated through the Drought Water Bank.	up to 3,765	July 1, 2009 to June 30, 2010	Not to exceed one year
2010	10030	Tule Basin Farms	21	Banks PP and Barker Slough PP	Service area of the State Water Project (Application 5630)	Addition of domestic, municipal, and industrial uses	Dudley Ridge WD, Kern County Water Agency, Napa County Flood Control & WCD; MWDSC; San Bernardino Valley MWD; Antelope Valley East Kern WA; Palmdale WD; Oak Flat WD	up to 3,520 AF	July 1, 2010 - June 30, 2011	July 1 to September 30, 2010

C-WIN and AquAlliance believe that the proposed 2010 water transfer by Tule Basin Farms (Giusti Ranch) is evidence of a long-term water transfer to the State Water Project that masquerades as a pair of short-term, temporary transfers that are coterminous by the calendar. Water Code Section 1735 states: "The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year." The series of transfers undertaken by Tule Basin Farms (Giusti Ranch) shown above indicates that by approving a temporary change petition from the District in 2010, the State Water Board would fail to recognize that the District is actually engaging in a long-term transfer (one that is longer than one year) that should be the subject of a petition under Water Code Section 1735, in violation of the intent of the short-term transfer provision of Water Code Section 1725. This is a reasonable presumption because currently the State Water Project's storage capacity, despite a wet winter in 2010, remains well below capacity because of other priorities for flows from the Feather River. Department of Water Resources meteorologists and planners have stated publicly that it will take at least another year or two for Lake Oroville to fill from winter snowmelt and runoff. Petitioners should acknowledge these existing conditions

as context for their proposed transfer. Tule Basin does not acknowledge in its 2010 petition's environmental information that it engaged in a similar transfer in 2009, when it proposed up to 3,765 acre-feet and actually transferred 3,007 acre-feet to the 2009 Drought Water Bank. These one-year transfers, while nominally legal, add to a consistent pattern of nearly identical transfers from the same seller's point of diversion to the same changed points of redirection (which in both years included State Water Project pumping and conveyance facilities at Banks Pumping Plant and Barker Slough Pumping Plant) to nearly identical customers. The 2010 transfer includes eight state water contractors that in turn include Metropolitan Water District of Southern California, the largest state water contractor participating in the 2009 Drought Water Bank pool of transfer recipients a year ago (our version of this "pool" document was downloaded from the State Water Board's web site in June 2010, whereas Tule Basin Farms' report cites a November 25, 2009 version of the pool to which Tule Basin water was sold). Also part of the 2009 DWB pool was Napa County Flood Control and Water Conservation District, San Bernardino Valley Municipal Water District, and Kern County Water Agency. Finally, the CEQA exemption based on a declaration of drought emergency by the Governor was disallowed by Alameda County Superior Court in March 2010, and the remedy includes a requirement that DWR prepare an environmental review of the 2009 Drought Water Bank transfers. We are also aware that DWR and the US Bureau of Reclamation plan a "water transfer program" for 2010 through 2011 (and which is modeled on the 2009 Drought Water Bank which was successfully challenged), so it is a reasonable presumption that Tule Basin Farms (Giusti Ranch) is likely to prepare another short-term transfer petition to provide water to this water transfer program next year. We urge the State Water Board to reject this short-term water transfer petition and advise the petitioner to file a long-term transfer petition instead.

- b. The proposed transfer, with nearly identical transfers occurring last year, evidences a long-term transfer subject to review under the California Environmental Quality Act.

Following on the reasoning with respect to the Water Code, C-WIN and AquAlliance allege that the proposed short-term transfer by Tule Basin Farms (Giusti Ranch) to the State Water Project contractors would represent another increment of a "project" that is improperly exempted from CEQA. We believe that, unlike in the case of *Sierra Club v. The West Side Irrigation District* (2005), the current transfer should be treated as a long-term transfer (one that represents a transfer of water recurring over a period greater than one year), and is subject to CEQA review. Tule Basin Farms (Giusti Ranch)'s transfers in 2009 and 2010 constitute a single project put forward by a single independent water agency; environmental review has been evaded because these transfers were filed incrementally as temporary short-term petitions; only a single water right (application 14804) is involved; each incremental petition would be for similar "up to" amounts to be transferred (between 3,765 and 3,520 acre-feet); and the petitions have essentially the same terms, identified in the table above. In addition, with the vacation of the CEQA exemption on the 2009 Drought Water Bank, there really is no programmatic coverage under CEQA for transfers like this, so serial water transfers are effectively out of compliance with CEQA. Cumulative effects of this and other transfers have been poorly handled or not examined at all. We believe this would represent an abuse of the State Water Board's discretion to approve this project as a short-term temporary transfer, and would violate the California Environmental Quality Act, which

requires that projects be treated as “the whole of an action,” and that the environmental effects of the action be fully disclosed to the public prior to its conduct.

Individual, when serial, transfers, such as Tule Basin Farms (Giusti Ranch)’s, confirms for C-WIN and AquAlliance the desperate need for the California Department of Water Resources to collaborate with the State Water Resources Control Board (as the steward of California’s public trust resources) to undertake a systematic programmatic environmental review under CEQA of water transfer programs that would transfer water from Sacramento Valley sources across the Delta to San Joaquin Valley and southern California users. This is necessary to gain a greater understanding of the “whole” of the actions involved in water transfers and their incremental, cumulative, and perhaps growth-inducing effects.

- c. The proposed transfer is contrary to Water Code Section 1745.10. Tule Basin Farms (Giusti Ranch) is located in southern Sutter County. Sutter County has undertaken, but has not yet adopted, a groundwater management plan for its territory. Section 1745.10 prohibits surface water transfers that rely on groundwater substitution when there is either no groundwater management plan present for the affected area, or when (if no groundwater management plan is present) the local water supplier (in this case, Tule Basin Farms (Giusti Ranch)) determines that the water transfer will not create or contribute to long-term overdraft conditions in the affected groundwater basin. C-WIN and AquAlliance protest this short-term transfer petition from the District because the District fails to demonstrate that no long-term overdraft conditions are present in its affected groundwater basin. As noted, there is no adopted groundwater management plan in Sutter County. We refer the State Water Board to the Sutter County data on groundwater elevations cited above. While not on the scale of other areas of California, the data indicate a long-term overdraft condition exists. We believe the burden of explaining the drop in groundwater elevations lies with Tule Basin Farms (Giusti Ranch) in this instance given reasonably available public information about this subject. The State Water Board should not allow this petition, or a long-term transfer petition, to proceed without such analysis.

3) The proposed transfer would have adverse environmental impacts.

- a. The petitioner requests approval for a year-long transfer when fisheries problems in the Sacramento and Feather Rivers continue year-round. Water temperature, flow timing (particularly with respect to attraction flows), and water level issues have been identified and these fishery issues need CEQA review under the aegis of a long-term transfer petition so that cumulative effects on fish and wildlife may be adequately evaluated and mitigated.
- b. Cumulative effects of lost Delta outflows. Tule Basin Farms (Giusti Ranch) would add Banks Pumping Plant and Barker Slough Pumping Plant to its points of rediversion under this petition. C-WIN and AquAlliance protest these proposed rediversion points because the transfer generates inflows to the Delta, but no net outflows to Suisun Bay, Suisun Marsh, and San Francisco Bay. Instead, the transfer is “accounted for” as water that proceeds through the Delta Cross Channel, and contributes to reverse flows in Old and Middle River that in turn contribute to fish entrainment at Banks Pumping Plant, before being exported to water users south of the Delta. However small a contribution these transfer water flows make on a percentage basis to Delta inflow, they are nonetheless cumulatively subtracted from Delta outflows, both intraseasonally and interannually.

Loss of Delta outflow means that the low salinity zone in the Delta is smaller than it would otherwise be, and therefore critical habitat for estuarine species, including striped bass young of the year and Delta smelt, may be adversely affected by increased density-dependence relationships.

These and other cumulative effects must be disclosed and analyzed on individual bases and as part of a programmatic environmental review under the California Environmental Quality Act to ensure all significant environmental effects of cumulating are taken into account.

- c. There may be habitat conservation plans and natural community conservation plans in the vicinity of transfer flows that could be affected by the proposed transfer.

4) Conclusion

C-WIN and AquAlliance urge the State Water Board that the requested transfer should be denied as a temporary transfer under Section 1725 of the Water Code. As a long-term transfer under Section 1735 of the Water Code, the proposed transfer should be analyzed under CEQA. The CEQA analysis should evaluate cumulative effects, not merely incremental effects.

Under what conditions may this protest be disregarded and dismissed? Not known at this time.

A true copy of this protest has been served upon the petitioner Tule Basin Farms (Giusti Ranch), c/o Marc Van Camp, Agent, MBK Engineers 1771 Tribute Road, Suite A, Sacramento, CA 95814

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Protests MUST be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.

Proof of Service

I hereby certify that on this day, June 11, 2010, I, Tim Stroshane, have placed in first class mail at Albany, California, a true copy of this comment letter mailed to:

**Tule Basin Farms (Giusti Ranch)
c/o Marc Van Camp
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95814**

A handwritten signature in blue ink, appearing to read "Tim Stroshane", is positioned above a horizontal line.

Tim Stroshane

Exhibit

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2010-0023-DWR

**IN THE MATTER OF LICENSE 2033 (APPLICATION 1699)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 5,802 ACRE-FEET OF WATER
FROM THE GARDEN HIGHWAY MUTUAL WATER COMPANY
TO EIGHT STATE WATER CONTRACTOR AGENCIES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 12, 2010,

Garden Highway Mutual Water Company
c/o Gary Kienlen
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95815

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Garden Highway Mutual Water Company's (GHMWC) petition requests the transfer of up to 5,802 acre-feet (af) of water to eight State Water Contractor Agencies. Water would be used within the State Water Project (SWP) service area. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. GHMWC proposes to transfer up to 5,802 af of water under License 2033 (Application 1699) to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, and the San Bernardino Valley Municipal Water District (hereinafter collectively referred to as the Agencies). To facilitate this transfer, GHMWC will pump additional groundwater and reduce its direct diversion from the Feather River by 39 cubic feet per second (cfs). At times when pumping capacity is available in the Delta, the additional flow in the Feather and Sacramento Rivers would be available for diversion at the SWP's Banks Pumping Plant or the Barker Slough Pumping Plant and delivery to the Agencies. The petition requests that the change be effective from July 1 through September 30, 2010.

In the absence of the proposed change, GHMWC would divert the quantity of water proposed for transfer from the Feather River pursuant to License 2033.

1.2 Groundwater Substitution. GHMWC's petition states that detailed information relative to historical groundwater pumping, well characteristics, and associated maps has been submitted to the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) for review. DWR has entered into an agreement with GHMWC, titled *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Garden Highway Mutual Water Company for the Storage and Conveyance of 2010 Transfer Water* (Agreement) for the conveyance of water pursuant to this temporary change. The Agreement includes a 12% (twelve percent) 'depletion loss' to protect the SWP and USBR's Central Valley Project (CVP) from injury associated with the transfer. GHMWC will only transfer 88% (eighty-eight percent) of the total quantity of groundwater pumped. The Agreement also includes a monitoring and reporting plan to address the impacts of additional groundwater pumping within GHMWC. A copy of GHMWC's petition is posted with the copy of the notice for this transfer on the Division of Water Rights' website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change. State Water Board staff contacted DFG staff in June, 2010 to discuss the proposed temporary change and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff also provided notice of the petition to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). State Water Board staff announced the issuance of the public notice for this petition at the Delta Operations for Salmonids and Sturgeon Group (DOSS) teleconference call on May 18, 2010. NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses.

2.0 BACKGROUND

2.1 Substance of GHMWC's License. License 2033 (Application 1699) authorizes the direct diversion of up to 39 cfs of water per annum from the Feather River between April 15 and October 31 of each year for irrigation purposes. The authorized point of diversion for License 2033 is located on the Feather River, N 72° 00' E, 4,130 feet from the SW corner of Section 24, T13N, R3E, MDB&M. The authorized place of use consists of 3,708.45 acres net within a gross area of 3,765.45 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant as points of diversion under License 2033. The service area of the SWP would also be temporarily added to the place of use under License 2033. The SWP points of diversion and service area are identified on Maps 1878-1, 2, 3 & 4 on file with the State Water Board Division of Water Rights under Application 5629. Domestic, municipal and industrial, salinity control, fish and wildlife enhancement, and water quality control would be temporarily added as purposes of use under License 2033.

2.3 OCAP Biological Opinions. The operations of the Banks Pumping Plant are governed by Biological Opinions issued by USFWS and NMFS for the long-term operations of the CVP and the SWP (referred to as OCAP BOs). These Biological Opinions were issued in 2008 (USFWS) and 2009 (NMFS) and are based on CALSIM modeling of SWP and CVP operations. The modeling includes up to 600,000 af of water transfers during the period from July 1 through September 30 of each year. Additionally, the Reasonable and Prudent Alternatives (RPAs) contained in the BOs do not include export restrictions during the July 1 through September 30 period. The total amount of additional pumping due to all water transfers (including the subject transfer) in 2010 is less than the 600,000 af assumed in the modeling performed for the BOs. Accordingly, additional pumping at the Banks Pumping Plant associated with the subject transfer between July 1 and September 30, 2010, is in conformance with the OCAP BOs. This Order limits the proposed transfer to the period from July 1 through September 30, 2010.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 11, 2010) was provided via first class mail to interested parties and by publication in the Sacramento Bee on May 15, 2010. The California Water Impact Network and AquAlliance (CWINA), the California Sportfishing Protection Alliance (CSPA), and the California Fisheries and Water Unlimited (CFWU) submitted timely comments regarding the proposed temporary change. State Water Board staff reviewed these comments and requested that GHMWC address the portion of the comments regarding groundwater substitution. These comments, GHMWC's additional information, and the State Water Board's responses are briefly summarized below. The comments and GHMWC's additional information are also available for viewing online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_to_orders/

3.1 Comments of the California Water Impact Network and AquAlliance. CWINA objects to the proposed temporary change based on the following concerns:

- a. GHMWC must demonstrate, not merely assert, that its transfer of surface water will have little to no impact on other parties within or downstream of its service area. CWINA states that a local groundwater management planning effort undertaken in 2008 showed that groundwater elevations near GHMWC (during 2007) had dropped between 5 and 15 feet from groundwater elevations in 1912-1913. CWINA alleges that the proposed groundwater substitution is contrary to Water Code section 1745.10. CWINA states that since there is no approved groundwater management plan for GHMWC's service area, GHMWC must determine that the proposed groundwater substitution will not create or contribute to long-term overdraft in the affected groundwater basin. CWINA asserts that GHMWC has not provided sufficient analysis to make this determination. CWINA also notes that the proposed groundwater substitution may have third-party impacts.
- b. The petition does not provide an accounting of evaporative loss of water from GHMWC's service area from July through September, as well as how much additional groundwater will be pumped to 'make up' for these evaporative losses.
- c. CWINA notes that GHMWC petitioned for a similar temporary change in 2009. CWINA believes that GHMWC's one-year transfers in 2009 and 2010 are a long-term transfer and should be subject to the requirements of Water Code section 1735 et seq. CWINA concludes that the proposed temporary change should be subject to the requirements of the California Environmental Quality Act (CEQA). CWINA notes that the CEQA exemption based on the Governor's 2009 declaration of drought conditions was disallowed by the Alameda County Superior Court in March, 2010.
- d. CWINA asserts that the proposed temporary change would have adverse environmental impacts. CWINA states that the impacts of changes in flow timing, water temperatures, and water levels should be reviewed pursuant to CEQA. CWINA also asserts that the proposed temporary addition of the Barker Slough Pumping Plant and the Banks Pumping Plant would result in increased inflow to the Delta without a corresponding increase in Delta Outflow.

State Water Board Responses:

- a. The State Water Board requested additional information from GHMWC regarding the issue of groundwater substitution. GHMWC states that while Sutter County is in the process of preparing a groundwater management plan, it has yet to be completed due to funding issues. GHMWC states that it does not believe the proposed temporary transfer will result in an overdraft of the underlying basin. GHMWC presented information regarding historical groundwater elevations showing that 2007 groundwater elevations within the portion of Sutter County are within plus or minus five feet of 1912-1913 groundwater elevations. Additionally, GHMWC submitted information regarding historic (1950-2005) groundwater elevations at a monitoring well within

approximately two miles of GHMWC. This information shows that groundwater elevations near GHMWC have fluctuated on a seasonal basis with the fluctuations increasing during dry years, however, these groundwater elevations have remained relatively stable during this 55-year period.

GHMWC states that this information shows that its groundwater basin is not in a state of overdraft. GHMWC also states that the proposed 2010 water transfer will be conducted consistent with the Groundwater and Surface Water Monitoring and Reporting Program and Mitigation Plan (Monitoring Plan) developed cooperatively with DWR. A similar plan was in place for GHMWC's previous water transfer, during which no third-party impacts were reported.

Based on this information, the proposed groundwater substitution will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin and thus is in conformance with the provisions of Water Code section 1745.10, subdivision (b). This Order requires GHMWC to implement the Monitoring Plan to mitigate potential impacts of the proposed groundwater substitution on other legal users of water.

- b. The proposed temporary change involves the pumping of additional groundwater to make up for forgone surface water diversions. The proposed temporary change will not result in a change in cropping patterns or irrigation methods. Accordingly, evaporation from GHMWC's service area will not change as a result of the proposed temporary change.
- c. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, this order does not rely on a CEQA exemption contained in the Governor's 2009 Drought Emergency Proclamation.
- d. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion of water at the Banks Pumping Plant and Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA objects to the proposed temporary change based on the following:

- a. CSPA notes that GHMWC received approval for a similar temporary change in 2009. CSPA states that GHMWC's one year transfers in 2009 and 2010 should not be considered a temporary change and should be subject to the requirements of Water Code section 1735 et seq. CSPA concludes

that the proposed temporary change should be considered a long-term transfer subject to the requirements of CEQA, and that the State Water Board should undertake a public trust analysis of License 2033.

- b. CSPA states that there is no adopted groundwater management plan for Sutter County. CSPA alleges that GHMWC has not shown that the groundwater substitution associated with the proposed temporary change will not contribute to conditions of groundwater overdraft. GHMWC should be required to provide an analysis that demonstrates that its proposed transfer would take place from a location where long-term groundwater overdraft does not exist.
- c. CSPA states that the State Water Board should not draw conclusions of substance regarding potential impacts of the proposed temporary change based on failure by DFG to comment. CSPA notes that DFG submitted substantial written and oral testimony in the Delta Flow Proceeding conducted by the State Water Board in January through March, 2010 regarding the dire condition of Bay-Delta fisheries, and also submitted extensive recommendations for greatly increased Delta outflow based on an equitable allocation of responsibility.

State Water Board Responses:

- a. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, Water Code section 1727, subdivision (d) prohibits the State Water Board from modifying any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change. Water Code section 1727, subdivision (e) prohibits the State Water Board from denying or placing conditions upon a temporary change to mitigate effects that are not caused by the temporary change. Thus, the State Water Board will not undergo a public trust analysis to modify or amend GHMWC's license, or place conditions upon this temporary change to mitigate alleged effects of GHMWC's ongoing operations as a condition of approval of the subject petition.
- b. See the State Water Board response to CWINA in 3.1a., above.
- c. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. DFG's comments on the Delta Flow Criteria Informational Proceeding (Proceeding) address setting flow criteria for the protection of the Delta ecosystem. DFG's recommendations for the Delta Flow Criteria do not address potential impacts of the proposed temporary change. Additionally, the only recommendation submitted by DFG regarding the Proceeding for the time period from July 1 through September 30 is a minimum flow requirement of 6,000 cfs on the Sacramento River. The proposed temporary change will increase flow on the Sacramento River during this time period.

3.3 Comments of the California Fisheries and Water Unlimited. CFWU objects to the proposed temporary change. CFWU's comments cite concerns regarding consultation with DFG, compliance with federal and State Endangered Species Act requirements, and impacts related to the underlying operations of the SWP.

State Water Board Response: As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion of water at the Banks Pumping Plant and Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents the amount of water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% (twelve percent) of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% (eight-eight percent) of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of the Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR has reviewed the proposed transfer and determined that, with inclusion of the 12% (twelve percent) depletion factor described in Section 1.2 of this Order, the SWP (and CVP) will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The Agreement also includes a monitoring and reporting plan to address the impacts of additional groundwater pumping within GHMWC as a result of this transfer. This Order requires compliance with this portion of the Agreement.

This Order also includes terms and conditions to ensure that other legal users of the water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant as a point of diversion to License 2033.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10, subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area, and requires the water supplier determine that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

Diversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

- [illegible]

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, points of diversion, and purpose of use under License 2033 (Application 1699) of the Garden Highway Mutual Water Company (GHMWC) for the transfer of up to 5,802 acre-feet of water is approved.

All existing terms and conditions of License 2033 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2010 and continuing through September 30, 2010.
2. GHMWC shall implement the monitoring and reporting plans contained in Exhibit 1 of the *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Garden Highway Mutual Water Company for Storage and Conveyance of 2010 Transfer Water* (Agreement) as a condition of transferring water pursuant to this Order.
3. GHMWC shall reduce its diversion rate at the original points of diversion authorized under License 2033 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping. The rate of additional groundwater pumped in order to make water available for transfer shall not exceed 39 cubic feet per second.
4. The place of use under License 2033 is temporarily expanded to include the service areas of the State Water Project (SWP) as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629. Water transferred pursuant to this Order shall only be delivered to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, or the San Bernardino Valley Municipal Water District, or any combination of the above.
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant are temporarily added as authorized points of diversion under License 2033.

Diversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

Diversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal and industrial, salinity control, fish and wildlife enhancement, and water quality control are temporarily added as purposes of use under License 2033.

7. Within 90 days of the completion of the transfer, but no later than December 31, 2010, GHMWC shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:

- a. General locations where the transferred water was used;
- b. The daily average rate water was made available for transfer pursuant to this Order;
- c. The daily average diversion rate for water diverted pursuant to License 2033 during the transfer period;
- d. The average daily streamflow measured at the nearest representative gaging station on the Feather River;
- e. The daily average pumping rate of groundwater pumped by GHMWC in excess of that which would have been pumped in the absence of this transfer; and
- f. Groundwater elevations within the vicinity of GHMWC prior to the proposed transfer, as required in Exhibit 1 of the Agreement.

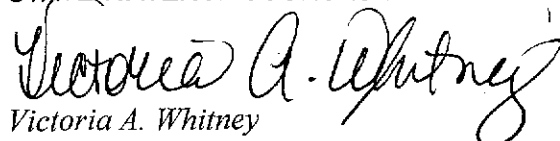
GHMWC shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2010, a map defining the groundwater elevations within the vicinity of GHMWC, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the take of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: JUL 02 2010

Exhibit

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State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916)3415400, Web: <http://www.waterrights.ca.gov>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS
Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION 1699 **PERMIT** 1793 **LICENSE** 2033

We, California Water Impact Network and AquAlliance of (C-WIN) P.O. Box 148, Quincy, CA 95971 and (AquAlliance) P.O. Box 4024, Chico, CA 95927 have read carefully a notice relative to a petition for ☒ change or ☐ extension of time under **APPLICATION 1699 of Garden Highway Mutual Water Company** to divert 5,802 acre-feet (at a rate of up to 39 cubic feet per second) from its point at N 72 degrees E, 4,130 feet from SW corner of Section 24, T13N, R3E, along Sutter Bypass borrow pit for transfer between July 1, 2010, to June 30, 2011, to eight State Water Contractor agencies (the Dudley Ridge Water District, Kern County Water Agency, Napa County Flood Control and Water Conservation District, the Metropolitan Water District of Southern California, Antelope Valley-East Kern Water Agency, Oak Flat Water District, Palmdale Water District, and the San Bernardino Valley Municipal Water District). It is our understanding this proposed transfer assumes that the petitioner will substitute groundwater for surface water.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

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State facts, which support the foregoing allegations:

C-WIN and AquAlliance protest and comment on Garden Highway Mutual Water Company's petition for change of place of use for transfer under Water Code Sections 1330 (actually protesting "an application") and 1726 (f) ("commenting" which must be considered by SWB in deciding the disposition of the short-term transfer change of use petition). Our organizations protest this transfer because we believe it does not serve the public interest, is contrary to the California Water and Public Resources Codes, and would have an adverse environmental impact.

- 1) Transfer is not in the public interest: Garden Highway Mutual Water Company's proposed transfer of surface water to eight State Water Project contractors (as cited in the petition dated April 7, 2010) is not in the public interest. Since some groundwater substitution will occur, the transferor, Garden Highway Mutual Water Company, must demonstrate, not merely assert, that the transfer of surface water from the district will have little to no impact on other parties within or downstream of the District.

Sutter County's groundwater management planning effort in 2008 found that southern Sutter County lands within which Garden Highway Mutual Water Company's lands occur, saw groundwater elevations fall variously from 5 feet above mean sea level nearest to the Feather

River confluence (with the Bear) to 15 feet below mean sea level closer to the rivers between 1912-13 and 2007. While not as serious a drop in groundwater elevation as occurs elsewhere in California, such decreases indicate that groundwater pumping costs are higher than they would be had Sutter County groundwater management policies protecting against the lowering of its water table. Removal of surface water supplies that offset demand for groundwater pumping is not in the public interest since application of the surface water under existing rights (absent the transfer) could instead help raise groundwater elevations under Garden Highway's lands. Other landowners in this area who would have to cope with declines in groundwater elevations. Their increased costs of pumping could have adverse effects on the local economy that go unexamined by the petitioner.

The petition fails to disclose probable third party impacts in the area of origin (Garden Highway Mutual Water Company and its environs) and the area(s) where delivery occurs. Even DWR acknowledges that all transfers have the potential to impact third parties (see Unresolved Issues at <http://www.swpao.water.ca.gov/transfers/index.cfm#Unresolved%20Issues>).

Evaporation of water will occur from the ground surface of the District's irrigated lands during July through September, to the extent that rice fields or other crops are flood-irrigated. The District's petition for temporary transfer provides no accounting of this evaporative loss and how much additional groundwater individual landowners in the vicinity would need to pump to make up for it.

2) Transfer is contrary to law.

- a. Water Code Section 1725. Transfers by Garden Highway Mutual Water Company with nearly identical terms, timing of release, transfer amounts, additional purposes of use, and proposed new users have occurred serially since 2009, as shown in the table below.

Cumulating Petitions for Temporary Changes

Year of Petition	Application Number	Applicant/ Water Right Holder	Average Diversion Rate of Transfer (cfs)	Changed Point of Rediversion	Changed Place of Use	Changed Purpose of Use	Proposed New User(s)	Transfer Amount	Term of Transfer	Timing of Releases
2009	1699	Garden Highway Mutual Water Company	39	Banks PP and Barker Slough PP, Jones PP, Contra Costa Canal	Service areas of the Central Valley Project(Application 5626) and State Water Project (Application 5630)	Addition of domestic, municipal, and industrial uses	Water users within the places of use of the CVP and SWP, facilitated through the Drought Water Bank.	up to 4,000 AF	July 1, 2009 to June 30, 2010	Not to exceed one year
2010	1699	Garden Highway Mutual Water Company	up to 39 cfs, July 1 through September 30, 2010	Banks PP and Barker Slough PP	Service area of the State Water Project (Application 5630)	Addition of domestic, municipal, and industrial uses	Dudley Ridge WD, Kern County Water Agency, Napa County Flood Control & WCD; MWDSC; San Bernardino Valley MWD; Antelope Valley East Kern WA; Palmdale WD; Oak Flat WD	up to 5,802 AF	July 1, 2010 - June 30, 2011	July 1 to September 30, 2010

C-WIN and AquAlliance believe that the proposed 2010 water transfer by Garden Highway Mutual Water Company is evidence of a long-term water transfer to the State Water Project that masquerades as a pair of short-term, temporary transfers that are coterminous by the calendar. Water Code Section 1735 states: "The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year." The series of transfers undertaken by Garden Highway Mutual Water Company shown above indicates that by approving a temporary change petition from the District in 2010, the State Water Board would fail to recognize that the District

is actually engaging in a long-term transfer (one that is longer than one year) that should be the subject of a petition under Water Code Section 1735, in violation of the intent of the short-term transfer provision of Water Code Section 1725. This is a reasonable presumption because currently the State Water Project's storage capacity, despite a wet winter in 2010, remains well below capacity because of other priorities for flows from the Feather River. Department of Water Resources meteorologists and planners have stated publicly that it will take at least another year or two for Lake Oroville to fill from winter snowmelt and runoff. Petitioners should acknowledge these existing conditions as context for their proposed transfer. Garden Highway does not acknowledge in its 2010 petition's environmental information that it engaged in a similar transfer in 2009, when it proposed up to 4,000 acre-feet and actually transferred 2,403 acre-feet to the 2009 Drought Water Bank. These one-year transfers, while nominally legal, add to a consistent pattern of nearly identical transfers from the same seller's point of diversion to the same changed points of redistribution (which in both years included State Water Project pumping and conveyance facilities at Banks Pumping Plant and Barker Slough Pumping Plant) to nearly identical customers. The 2010 transfer includes eight state water contractors that are identified as transfer recipients, and four (Metropolitan, Kern County Water Agency, Napa County Flood Control and Water Conservation District, and San Bernardino Valley Municipal Water District) appear among the 2009 Drought Water Bank pool of transfer recipients a year ago, according to Drought Water Bank pool recipients identified by the State Water Board (accessed as of June 2010). Garden Highway's report to the State Water Board about its Drought Water Bank transfer, dated November 30, 2009, indicates that by November 25, 2009, Metropolitan and San Bernardino were definite recipients of its transferred surface water. Finally, the CEQA exemption based on a declaration of drought emergency by the Governor was disallowed by Alameda County Superior Court in March 2010, and the remedy includes a requirement that DWR prepare an environmental review of the 2009 Drought Water Bank transfers. We are also aware that DWR and the US Bureau of Reclamation plan a "water transfer program" for 2010 through 2011 (and which is modeled on the 2009 Drought Water Bank which was successfully challenged), so it is a reasonable presumption that Garden Highway Mutual Water Company is likely to prepare another short-term transfer petition to provide water to this water transfer program next year. We urge the State Water Board to reject this short-term water transfer petition and advise the petitioner to file a long-term transfer petition instead.

- b. The proposed transfer, with nearly identical transfers occurring last year, evidences a long-term transfer subject to review under the California Environmental Quality Act.

Following on the reasoning with respect to the Water Code, C-WIN and AquAlliance allege that the proposed short-term transfer by Garden Highway Mutual Water Company to the State Water Project contractors would represent another increment of a "project" that is improperly exempted from CEQA. We believe that, unlike in the case of *Sierra Club v. The West Side Irrigation District* (2005), the current transfer should be treated as a long-term transfer (one that represents a transfer of water recurring over a period greater than one year), and is subject to CEQA review. Garden Highway Mutual Water Company's transfers in 2009 and 2010 constitute a single project put forward by a single independent water agency; environmental review has been evaded because these transfers were filed incrementally as temporary short-term petitions; only a single water right (application 14804) is involved; each incremental petition would be for

similar “up to” amounts to be transferred (between 4,000 and 5,802 acre-feet); and the petitions have essentially the same terms, identified in the table above. In addition, with the vacation of the CEQA exemption on the 2009 Drought Water Bank, there really is no programmatic coverage under CEQA for transfers like this, so serial water transfers are effectively out of compliance with CEQA. Cumulative effects of this and other transfers have been poorly handled or not examined at all. We believe this would represent an abuse of the State Water Board’s discretion to approve this project as a short-term temporary transfer, and would violate the California Environmental Quality Act, which requires that projects be treated as “the whole of an action,” and that the environmental effects of the action be fully disclosed to the public prior to its conduct.

Individual, when serial, transfers, such as Garden Highway Mutual Water Company’s, confirms for C-WIN and AquAlliance the desperate need for the California Department of Water Resources to collaborate with the State Water Resources Control Board (as the steward of California’s public trust resources) to undertake a systematic programmatic environmental review under CEQA of water transfer programs that would transfer water from Sacramento Valley sources across the Delta to San Joaquin Valley and southern California users. This is necessary to gain a greater understanding of the “whole” of the actions involved in water transfers and their incremental, cumulative, and perhaps growth-inducing effects.

- c. The proposed transfer is contrary to Water Code Section 1745.10. Garden Highway Mutual Water Company is located in southern Sutter County. Sutter County has undertaken, but has not yet adopted, a groundwater management plan for its territory. Section 1745.10 prohibits surface water transfers that rely on groundwater substitution when there is either no groundwater management plan present for the affected area, or when (if no groundwater management plan is present) the local water supplier (in this case, Garden Highway Mutual Water Company) determines that the water transfer will not create or contribute to long-term overdraft conditions in the affected groundwater basin. C-WIN and AquAlliance protest this short-term transfer petition from the District because the District fails to demonstrate that no long-term overdraft conditions are present in its affected groundwater basin. As noted, there is no adopted groundwater management plan in Sutter County. We refer the State Water Board to the Sutter County data on groundwater elevations cited above. While not on the scale of other areas of California, the data indicate a long-term overdraft condition exists. We believe the burden of explaining the drop in groundwater elevations lies with Garden Highway Mutual Water Company in this instance given reasonably available public information about this subject. The State Water Board should not allow this petition, or a long-term transfer petition, to proceed without such analysis.

3) The proposed transfer would have adverse environmental impacts.

- a. The petitioner requests approval for a year-long transfer when fisheries problems in the Yuba and Feather Rivers continue year-round. Water temperature, flow timing (particularly with respect to attraction flows), and water level issues have been identified and these fishery issues need CEQA review under the aegis of a long-term transfer petition so that cumulative effects on fish and wildlife may be adequately evaluated and mitigated.
- b. Cumulative effects of lost Delta outflows. Garden Highway Mutual Water Company would add Banks Pumping Plant and Barker Slough Pumping Plant to its points of

rediversion under this petition. C-WIN and AquAlliance protest these proposed rediversion points because the transfer generates inflows to the Delta, but no net outflows to Suisun Bay, Suisun Marsh, and San Francisco Bay. Instead, the transfer is "accounted for" as water that proceeds through the Delta Cross Channel, and contributes to reverse flows in Old and Middle River that in turn contribute to fish entrainment at Banks Pumping Plant, before being exported to water users south of the Delta. However small a contribution these transfer water flows make on a percentage basis to Delta inflow, they are nonetheless cumulatively subtracted from Delta outflows, both intraseasonally and interannually. Loss of Delta outflow means that the low salinity zone in the Delta is smaller than it would otherwise be, and therefore critical habitat for estuarine species, including striped bass young of the year and Delta smelt, may be adversely affected by increased density-dependence relationships.

These and other cumulative effects must be disclosed and analyzed on individual bases and as part of a programmatic environmental review under the California Environmental Quality Act to ensure all significant environmental effects of cumulating are taken into account.

- c. There may be habitat conservation plans and natural community conservation plans in the vicinity of transfer flows that could be affected by the proposed transfer.

4) Conclusion

C-WIN and AquAlliance urge the State Water Board that the requested transfer should be denied as a temporary transfer under Section 1725 of the Water Code. As a long-term transfer under Section 1735 of the Water Code, the proposed transfer should be analyzed under CEQA. The CEQA analysis should evaluate cumulative effects, not merely incremental effects.

Under what conditions may this protest be disregarded and dismissed? Withdrawal of the petition

A true copy of this protest has been served upon the petitioner Garden Highway Mutual Water Company, c/o Gary Kienlen, Agent, 1771 Tribute Road, Suite A, Sacramento, CA 95814

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Protests MUST be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.

Proof of Service

I hereby certify that on this day, June 11, 2010, I, Tim Stroshane, have placed in first class mail at Albany, California, a true copy of this comment letter mailed to:

**Garden Highway Mutual Water Company
c/o Gary Kienlen
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95814**

A handwritten signature in blue ink, appearing to read "Tim Stroshane", is positioned above a horizontal line.

Tim Stroshane

Exhibit

J

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2010-0022-DWR

IN THE MATTER OF LICENSE 11118 (APPLICATION 14804)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 10,000 ACRE FEET OF WATER
FROM THE SOUTH SUTTER WATER DISTRICT
TO EIGHT STATE WATER CONTRACTOR AGENCIES

ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF REDIVERSION,
PLACE OF USE, AND PURPOSE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 7, 2010,

South Sutter Water District
c/o Marc Van Camp
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95815

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. South Sutter Water District's (SSWD) petition requests the transfer of up to 10,000 acre-feet (af) of water to eight State Water Contractor Agencies. Water would be used within the State Water Project (SWP) service area. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. SSWD proposes to transfer up to 10,000 af of water under License 11118 (Application 14804) to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, and the San Bernardino Valley Municipal Water District (hereinafter collectively referred to as the Agencies). To facilitate the transfer, SSWD proposes to release an additional 10,000 af of water currently stored in Camp Far West Reservoir and Camp Far West Diversion Dam into the Bear River, tributary to the Feather River, thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta. The water would be available for rediversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant and delivery to the Agencies.

The petition states that in the absence of this transfer, the subject 10,000 af of water would either remain in storage within Camp Far West Reservoir or be released for use within SSWD.

1.2 Previous Similar Transfers. In 2008 and 2009, SSWD received approval from the State Water Board for transfers similar to the proposed temporary change (see Corrected Order WR 2008-0034-DWR and Corrected Order WR 2009-0040-DWR). Both transfers involved a total of 10,000 af. In 2008, the transferees were several SWP water agencies and in 2009, the transferee was the 2009 Drought Water Bank. The petition includes information on the operations of Camp Far West Reservoir and its main canal deliveries to SSWD for the 2009 transfer.

1.3 Groundwater Substitution. SSWD's petition states that its landowners receive their base water supply from groundwater pumping and receive supplemental water from Camp Far West Reservoir. The petition states that landowners will not change their cropping patterns due to the transfer. SSWD anticipates that as a result of the proposed transfer, up to 10,000 additional af of groundwater pumping could occur. The Department of Water Resources (DWR) has entered into an agreement with SSWD, titled *Agreement Between the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and South Sutter Water District for the Storage and Conveyance of 2010 Transfer Water (Agreement)* for the conveyance of water pursuant to this temporary change. The Agreement includes a 6% (six percent) 'depletion loss' to protect the SWP and the United States Bureau of Reclamation's (USBR) Central Valley Project (CVP) from injury associated with the transfer. Transfer releases are measured at the Camp Far West Diversion Dam. Pursuant to the Agreement, SSWD will release 10,000 af from Camp Far West Diversion Dam on the same pattern as otherwise would have been delivered to landowners absent the transfer. SSWD will receive credit from DWR for the release of 9,400 af of water. The Agreement also includes a monitoring and reporting plan to address the impacts of additional groundwater pumping within SSWD.

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change. State Water Board staff contacted DFG staff in early June, 2010 to discuss the proposed temporary change and DFG did not identify any concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff also provided notice of the petition to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). State Water Board staff announced the issuance of the public notice for this petition at the Delta Operations for Salmonids and Sturgeon Group (DOSS) teleconference call on May 18, 2010. NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses.

2.0 BACKGROUND

2.1 Substance of SSWD's License. License 11118 (Application 14804) authorizes the diversion to storage of up to 58,370 af of water per annum from the Bear River between October 1 and June 30. License 11118 also authorizes the direct diversion from the Bear River of up to 330 cubic feet per second (cfs) between May 1 and September 1 of each year. The point of diversion to storage for License 11118 is located at the Camp Far West Dam. Additionally, the Camp Far West Diversion Dam (located about one mile downstream of the Camp Far West Dam) is an authorized point of direct diversion and redirection to storage.

The water is used for irrigation and domestic purposes within the authorized place of use, as well as incidental power generation. The authorized place of use under License 11118 is a net of 59,000 acres within a gross area of 65,796 acres within SSWD, a net of 4,180 acres within the Camp Far West Irrigation District (including 102 acres outside its boundaries served under contract), and a power generation plant located on SSWD's conveyance canal.

In order to protect fish resources downstream of the Camp Far West Diversion Dam, SSWD is required to bypass 25 cfs between April 1 and June 30 of each year and 10 cfs between July 1 and March 31 of the succeeding year. Additionally, SSWD (with other parties within the Bear River watershed) has entered

into an agreement (referred to as the Bear River Agreement) with DWR to meet the Bear River watershed's responsibilities for Bay-Delta flow objectives. This agreement requires SSWD to make up to 4,400 af of water available to DWR during dry and critically dry water years. SSWD's petition states that the water intended for transfer is in addition to the water released to DWR pursuant to the Bear River Agreement. Additional information regarding the Bear River Agreement is on file with the State Water Board under Application 14804.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant as points of redirection to License 11118. The service area of the SWP would also be temporarily added to the place of use under License 11118. The SWP points of redirection and service area are identified on Maps 1878-1, 2, 3 & 4 on file with the State Water Board Division of Water Rights under Application 5629. Municipal and industrial, salinity control, fish and wildlife enhancement, and water quality control would be temporarily added as purposes of use under License 11118.

2.3 OCAP Biological Opinions. The operations of the Banks Pumping Plant are governed by Biological Opinions issued by USFWS and NMFS for the long-term operations of the CVP and the SWP (referred to as OCAP BOs). These Biological Opinions were issued in 2008 (USFWS) and 2009 (NMFS) and are based on CALSIM modeling of SWP and CVP operations. The modeling includes up to 600,000 af of water transfers during the period from July 1 through September 30 of each year. Additionally, the Reasonable and Prudent Alternatives (RPAs) contained in the BOs do not include export restrictions during the July 1 through September 30 period. The total amount of additional pumping due to all water transfers (including the subject transfer) in 2010 is less than the 600,000 af assumed in the modeling performed for the BOs. Accordingly, additional pumping at the Banks Pumping Plant associated with the subject transfer between July 1 and September 30, 2010, is in conformance with the OCAP BOs. This Order limits the proposed transfer to the period from July 1 through September 30, 2010.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated April 30, 2010) was provided via first class mail to interested parties and by publication in the Sacramento Bee on May 4, 2010. The California Water Impact Network and AquAlliance (CWINA) and the California Sportfishing Protection Alliance (CSPA) submitted timely comments regarding the proposed temporary change. State Water Board staff reviewed these comments and requested that SSWD address the portion of the comments regarding groundwater substitution. These comments, SSWD's additional information, and the State Water Board's responses are briefly summarized below. The comments and SSWD's additional information are also available for viewing online with this Order at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_to_orders/

3.1 Comments of the California Water Impact Network and AquAlliance. CWINA objects to the proposed temporary change based on the following concerns:

- a. The proposed temporary change will involve groundwater substitution and the petitioner has failed to show that the associated increase in groundwater pumping will have little to no effect on other parties within or downstream of SSWD. CWINA states that a local groundwater management planning effort undertaken in 2008 showed that groundwater elevations within SSWD (during 2007) had dropped between 5 and 35 feet from groundwater elevations in 1912-1913. CWINA alleges that the proposed groundwater substitution is contrary to Water Code section 1745.10. CWINA states that there is no approved groundwater management plan in Sutter County and that SSWD must determine that the proposed groundwater substitution will not create or contribute to long-term overdraft in the affected groundwater basin. CWINA asserts that SSWD has not provided sufficient analysis to make this determination. CWINA also notes that the proposed groundwater substitution may have third-party impacts.

- b. The petition does not provide an accounting of evaporative loss of water from SSWD's service area from July through September, as well as how much additional groundwater will be pumped to 'make up' for these evaporative losses.
- c. CWINA notes that SSWD petitioned for similar temporary changes in 2008 and 2009. CWINA believes that SSWD's series of transfers from 2008 through 2010 is a long-term transfer and should be subject to the requirements of Water Code section 1735 et seq. CWINA concludes that the proposed temporary change should be subject to the requirements of the California Environmental Quality Act (CEQA). CWINA notes that CEQA exemption based on the Governor's 2009 declaration of drought conditions was disallowed by the Alameda County Superior Court in March, 2010.
- d. CWINA asserts that the proposed temporary change would have adverse environmental impacts. CWINA states that the impacts of changes in flow timing, water temperatures, and water levels should be reviewed pursuant to CEQA. CWINA also asserts that the proposed temporary addition of the Barker Slough Pumping Plant and the Banks Pumping Plant would result in increased inflow to the Delta without a corresponding increase in Delta Outflow.

State Water Board Responses:

- a. The State Water Board requested additional information from SSWD regarding the issue of groundwater substitution. SSWD states that it adopted an updated Groundwater Management Plan (GWMP) in October, 2009 and that the proposed 2010 temporary water transfer is consistent with its GWMP. SSWD states that the hydrographs referenced by both CSPA and CWINA from Sutter County's Plan Advisory Group Meeting No. 3 (Slides 22 and 43, dated Oct 2008) do not indicate overdraft conditions; in contrast, they show long-term (at least 50 years) stabilized groundwater levels in most of the District and, in the extreme southeast corner of the District, ongoing recovery of groundwater levels over the last 30 years. The GWMP showed no indication of overdraft, as an analysis of groundwater level trends underlying the District and within Sutter County identified that groundwater levels are not continuously declining in any part of the District. SSWD states that observations of groundwater levels indicate that the groundwater basin did not experience abrupt changes that might have been attributable to the District's 2008 or 2009 water transfers. The proposed 2010 water transfer will be conducted consistent with the Groundwater and Surface Water Monitoring and Reporting Program and Mitigation Plan (Monitoring Plan) developed cooperatively with the Department of Water Resources. This Plan was in place for SSWD's previous water transfers, during which no third-party impacts were reported.

Based on this information, the proposed groundwater substitution is consistent with the GWMP and thus in conformance with the provisions of Water Code section 1745.10 (a). This Order requires SSWD to implement the Monitoring Plan to mitigate potential impacts of the proposed groundwater substitution on other legal users of water.

- b. SSWD's petition states that its landowners receive their base water supply from groundwater pumping and receive supplemental water from Camp Far West Reservoir. The petition states that landowners will not change their cropping patterns due to the transfer. Accordingly, evaporation from SSWD's service area will not change as a result of the proposed temporary change.
- c. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary

changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, this order does not rely on a CEQA exemption contained in the Governor's 2009 Drought Emergency Proclamation.

- d. As stated in Section 1.4 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Rediversion of water at the Banks Pumping Plant and Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA objects to the proposed temporary change based on the following:

- a. CSPA notes that SSWD petitioned for similar temporary changes in 2008 and 2009. CSPA states that SSWD's series of transfers from 2008 through 2010 should not be considered a temporary change and should be subject to the requirements of Water Code section 1735 et seq. CSPA concludes that the proposed temporary change should be considered a long-term transfer subject to the requirements of CEQA, and that the State Water Board should undergo a public trust analysis of License 11118.
- b. CSPA states that the petition lacks specificity regarding potential impacts of groundwater substitution associated with the proposed temporary change. The State Water Board should require greater specificity of the effects of the proposed transfer, especially on groundwater in the present year. CSPA states that information presented during the adoption of the Sutter County Groundwater Management Plan appears to suggest that there is significant groundwater overdraft in part of SSWD's service area.
- c. SSWD's petition requests that the temporary change be approved for one year, from July 1, 2010 through June 30, 2011. The transfer should be limited to the months of July, August and September, 2010.
- d. CSPA states that the State Water Board should not draw conclusions of substance regarding potential impacts of the proposed temporary change based on failure by DFG to comment. CSPA notes that DFG submitted substantial written and oral testimony in the Delta Flow Proceeding conducted by the State Water Board in January through March, 2010 regarding the dire condition of Bay-Delta fisheries, and also submitted extensive recommendations for greatly increased Delta outflow based on an equitable allocation of responsibility.

State Water Board Responses:

- a. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR,

WR 2006-0010-DWR, and 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, Water Code section 1727 subdivision (d) prohibits the State Water Board from modifying any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change. Water Code section 1727 subdivision (e) prohibits the State Water Board from denying or placing conditions upon a temporary change to mitigate effects that are not caused by the temporary change. Thus, the State Water Board will not undergo a public trust analysis to modify or amend SSWD's license, or place conditions upon this temporary change to mitigate alleged affects of SSWD's ongoing operations.

- b. See the State Water Board response to CWINA in 3.1a., above.
- c. This Order limits the redirection of water at the Banks Pumping Plant and Barker Slough Pumping Plant to the period from July 1 through September 30, 2010, consistent with the OCAP BOs described in Section 2.3 of this Order.
- d. As stated in Section 1.4 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any concerns regarding impacts to fish, wildlife, or other beneficial uses. In this case, the absence of DFG comments is due to the lack of potential impacts associated with the proposed change. DFG's comments on the Delta Flow Criteria Informational Proceeding (Proceeding) address setting flow criteria for the protection of the Delta ecosystem. DFG's recommendations for the Delta Flow Criteria do not address potential impacts of the proposed temporary change. Additionally, the only recommendation submitted by DFG regarding the Proceeding for the time period from July 1 through September 30 is a minimum flow requirement of 6,000 cfs on the Sacramento River. The proposed temporary change will actually increase flow on the Sacramento River during this time period.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water released from Camp Far West Diversion Dam, made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents an amount of water which would not be available for use in the downstream water supply. DWR has reviewed the transfer proposal and associated groundwater pumping and determined that 6% (six percent) of the additional groundwater pumping has the potential to affect streamflow. This Order limits the amount of water available for transfer to 94% (ninety-four percent) of the surface water released from Camp Far West Diversion Dam as a result of this transfer.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR has reviewed the proposed transfer and determined that, with inclusion of the 6% (six percent) depletion factor described in Section 1.3 of this Order, the SWP (and CVP) will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The Agreement also includes a monitoring and reporting plan to address the impacts of additional groundwater pumping within SSWD as a result of this transfer. This Order requires compliance with this portion of the Agreement.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Barker Slough Pumping Plant as points of rediversion to License 11118.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (a). That section requires groundwater use associated with a groundwater substitution transfer to be in conformance with the approved groundwater management plan for the affected area.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Rediversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

Rediversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

[illegible]

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, purpose of use, and points of rediversion under License 11118 (Application 14804) of the South Sutter Water District (SSWD) for the transfer of up to 10,000 acre-feet (af) of water is approved.

All existing terms and conditions of License 11118 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2010 and continuing through September 30, 2010.
2. Petitioner shall implement the monitoring and reporting plans contained in Exhibit 1 of the *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and South Sutter Water District for Storage and Conveyance of 2010 Transfer Water* (Agreement) as a condition of transferring water pursuant to this Order.
3. The petitioner shall release water from Camp Far West Reservoir and thence Camp Far West Diversion Dam on the same pattern as otherwise would have been delivered to landowners absent the transfer. The amount of water transferred pursuant to this Order shall not exceed 94% (ninety-four percent) of the rate of additional releases from Camp Far West Diversion Dam for the transfer.
4. The place of use under License 11118 is temporarily expanded to include the service areas of the State Water Project (SWP) (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629). Water transferred pursuant to this order shall only be delivered to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, or the San Bernardino Valley Municipal Water District.
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant are temporarily added as authorized points of rediversion under License 11118.

Rediversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

Rediversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Municipal and industrial, salinity control, fish and wildlife enhancement, and water quality control are temporarily added as purposes of use under License 11118.
7. Within 90 days of the completion of the transfer, but no later than December 31, 2010, SSWD shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this

Order. The report shall include the following information:

- a. General locations where the transferred water was used;
- b. The daily average rate water is made available for transfer at the Camp Far West Diversion Dam pursuant to this Order; and
- c. Groundwater elevations within the vicinity of SSWD prior to the proposed transfer, as required by Exhibit 1 of the Agreement.

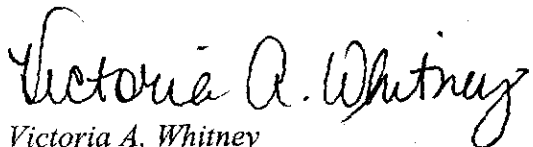
SSWD shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year starting in 2011, a map defining the groundwater elevations within the vicinity of SSWD, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD



Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUL 01 2010**

Exhibit

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State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916)3415400, Web: <http://www.waterrights.ca.gov>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS
Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION 14804 PERMIT 11297 LICENSE 11118

We, California Water Impact Network and AquAlliance of (C-WIN) P.O. Box 148, Quincy, CA 95971 and (AquAlliance) P.O. Box 4024, Chico, CA 95927 have read carefully a notice relative to a petition for ☒ change or ☐ extension of time under APPLICATION 14804 of South Sutter Water District to appropriate water from Camp Far West Reservoir and Camp Far West Diversion to eight State Water Contractor agencies (the Dudley Ridge Water District, Kern County Water Agency, Napa County Flood Control and Water Conservation District, the Metropolitan Water District of Southern California, Antelope Valley-East Kern Water Agency, Oak Flat Water District, Palmdale Water District, and the San Bernardino Valley Municipal Water District).

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

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State facts, which support the foregoing allegations:

C-WIN and AquAlliance understand that the primary purpose of this proposed transfer of surface water from South Sutter Water District to the State Water Project represents a fiscalization of water transfers (analogous to the "fiscalization of land use" where land use decisions are made by local governments based on how much tax base results from alternative types of development). Here, South Sutter Water District states in its Environmental Information attachment that: "Increased costs associated with the FERC relicensing process, the required Probable Maximum Flood (PMF), and other regulatory processes have resulted in the District considering a water transfer to aid in offsetting these large expenses in order to maintain their ability to provide an affordable water supply." The District's revenue stream from its existing ratepayer base would seem to be insufficient to sustain predictable and possibly recurring regulatory processes (such as FERC relicensing of its powerhouse). The District disclosed this motive for undertaking this transfer each of the last three years, from 2008 through the present.

We also note that one week prior to filing this petition, YubaNet reported on March 31, 2010, that, "...at least 10,000 acre-feet of supplemental water would be available from PG&E." "While NID [Nevada Irrigation District] is currently under contract until 2013 to sell surplus water to South Sutter," according to director Scott Miller, the District is 'reviewing what it charges the Sutter County-based water district.'" C-WIN and AquAlliance request clarification from the petitioner and the State Water Board as to whether this public reference to a transfer of water in the same amount as South Sutter's submitted petition one week after this story appeared, is a re-transfer of water that South

Sutter will have purchased from Nevada Irrigation District, who in turn purchased it from Pacific Gas and Electric Company.

C-WIN and AquAlliance protest SSWD's petition for change of place of use for transfer under Water Code Sections 1330 (actually protesting "an application") and 1726 (f) ("commenting" which must be considered by SWB in deciding the disposition of the short-term transfer change of use petition). Our organizations protest this transfer because we believe it does not serve the public interest, is contrary to the California Water and Public Resources Codes, and would have an adverse environmental impact.

- 1) Transfer is not in the public interest: South Sutter Water District's proposed transfer of surface water from Camp Far West Reservoir to eight State Water Project contractors (as cited in the petition dated April 7, 2010) is not in the public interest for the following reasons:
 - a. Groundwater substitution to replace transferred surface water supplies in the District will likely occur, though it is not disclosed in the petition. "Each year," states the District in its Attachment to Temporary Transfer Petition, "landowners receive supplemental surface water supplies as a result of [Camp Far West] Reservoir releases. Irrigation requirements above the supplemental surface water supply provided by the District are met through groundwater pumping within the District. The District operates the system's outflow structures to maintain surface water levels within delivery and drainage channels to facilitate deliveries upstream. The outflow structures during the 2010 proposed temporary transfer will be operated to maintain water levels at their historical levels. Therefore, because there will be no change in landowner or District operations, there will be no change in District outflow as a result of the proposed transfer." (page 4)

This passage from the petition appears to describe retention of water for flood irrigation for rice fields in the District's jurisdiction. The District uses outflow structures to maintain water levels on the fields, but does not account for where the water on the fields to be controlled by outflow structures originally comes from for the growing season and when it is put there, especially during July through September, the hottest months of the growing season when surface evaporation will be at its greatest. The description of these operations is inadequate for the State Water Board to make a conclusive determination that the surface water transfer would not be replaced from some other source, including most likely groundwater. Development of Camp Far West Reservoir and its associated facilities in the 1950s was intended to offset groundwater elevation declines and reduce pumping costs for irrigators, similar to other reservoir projects of the times. Such a project is operated conjunctively with groundwater supplies. The District's description of "supplemental surface water supplies" strongly implies that the surface water is intended not as the sole source of water but to supplement other sources of water to District landowners, including their use of groundwater. According to Sutter County groundwater management plan background information from 2008, much of South Sutter WD's rice lands use a mixture of both surface and groundwater supplies, confirming this blending of two water sources; if one water source is sent away, more of the other will be needed if, as the District contends, cropping patterns are to remain unchanged. C-WIN and AquAlliance believe that, logically, groundwater substitution would have to occur since, as the District claims, "there will be no change in landowner or District operations" otherwise.

- b. The District fails to demonstrate that the transfer will have little to no impact on other parties within or downstream of the District. Since some groundwater substitution must occur, and is not disclosed, the transferor, South Sutter Water District, must demonstrate, not merely assert, that “the cropping pattern within the District, delivery operations, and outflow operations will not change as a result of the proposed transfer,” and that the transfer of surface water from the district “will have little to no impact on other parties within or downstream of the District.”

Sutter County’s groundwater management planning effort in 2008 found that southern Sutter County lands within the South Sutter Water District saw groundwater elevations fall variously from 5 feet nearest to the Bear/Feather River confluence to over 35 feet further from the confluence between 1912-13 and 2007. While not as serious a drop in groundwater elevation as occurs elsewhere in California, such decreases indicate that groundwater pumping costs are higher than they would be had Sutter County groundwater management policies protecting against the lowering of its water table. Removal of surface water supplies that offset demand for groundwater pumping is not in the public interest, since there are several different landowners in this area who would have to cope with declines in groundwater elevations. Their increased costs of pumping could have adverse effects on the local economy that go unexamined in the petition.

The petition fails to disclose probable third party impacts in the area of origin (South Sutter Water District and its environs) and the area(s) where delivery occurs. Even DWR acknowledges that all transfers have the potential to impact third parties (Unresolved Issues <http://www.swpao.water.ca.gov/transfers/index.cfm#Unresolved%20Issues>).

Evaporation of water will occur from the ground surface of the District’s irrigated lands during July through September, when rice fields are flood-irrigated. The District’s petition for temporary transfer provides no accounting of this evaporative loss and how much additional groundwater individual landowners would need to pump to make up for it.

Finally, an appropriate and responsible course of action that would obviate the District’s perceived need to sell water through a temporary change petition for transfer would be to determine what the revenue and resource gaps are for its upcoming and current regulatory obligations and raise rates locally to defray these expenses. This course of action would be far more reasonable and responsible than relying on Delta pumping and groundwater substitution with their associated environmental impacts. The transfer proposal externalizes the District’s costs of regulatory compliance onto nature using the water transfer market and other potential third parties. This is contrary to the public interest in protecting the public trust resources of the Delta and the public’s stake in having readily accessible groundwater.

2) Transfer is contrary to law in California Water Code Sections 1725, and in Water Code Section 1745.10.

- a. Water Code Sections 1725. Transfers by South Sutter Water District with the same terms, timing of release, transfer amounts, additional purposes of use, and proposed new users have occurred serially since 2008, as shown in the table below.

Cumulating Petitions for Temporary Changes

Year of Petition	Application Number	Applicant/ Water Right Holder	Average Diversion Rate of Transfer (cfs)	Changed Point of Rediversion	Changed Place of Use	Changed Purpose of Use	Proposed New User(s)	Transfer Amount	Term of Transfer	Timing of Releases
2008	14804	South Sutter Water District	100	Banks PP and Barker Slough PP	Additional place to include State Water Project service areas served by export facilities; transfer water to be placed for beneficial use within Kings, Kern, Los Angeles, Napa, Orange, San Diego, Riverside, San Bernardino, and Tulare counties	Addition of municipal and industrial use	Dudley Ridge WD, Kern County Water Agency, Napa County Flood Control & WCD; MWDSC; San Bernardino Valley MWD; Antelope Valley East Kern WA; Palmdale WD; Tulare Lake Basin WSD	up to 10,000 AF	July 1, 2008 - June 30, 2009	July - September 2008
2009	14804	South Sutter Water District	100	Banks PP and Barker Slough PP, Jones PP, Contra Costa Canal	Service areas of the Central Valley Project(Application 5626) and State Water Project (Application 5630)	Addition of municipal and industrial use	2009 Department of Water Resources/US Bureau of Reclamation Drought Water Bank; contractors in the 2009 DWB pool included: MWDSC, Kern County Water Agency, Napa County Flood Control & WCD, and San Bernardino Valley MWD	up to 10,000 AF	July 1, 2009 - June 30, 2010	July - September 2009
2010	14804	South Sutter Water District	150	Banks PP and Barker Slough PP	Service area of the State Water Project (Application 5630)	Addition of municipal and industrial use	Dudley Ridge WD, Kern County Water Agency, Napa County Flood Control & WCD; MWDSC; San Bernardino Valley MWD; Antelope Valley East Kern WA; Palmdale WD; Oak Flat WD	up to 10,000 AF	July 1, 2010 - June 30, 2011	July - September 2010

C-WIN and AquAlliance believe that the proposed 2010 water transfer by South Sutter Water District is evidence of a long-term water transfer to the State Water Project that masquerades as a series of short-term, temporary transfers. Water Code Section 1735 states: “The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year.” The sequence of transfers undertaken by South Sutter Water District shown above indicates that by approving a temporary change petition from the District in 2010, the State Water Board would fail to recognize that the District is actually engaging in a long-term transfer that should be the subject of a petition under Section 1735, in violation of the intent of the short-term transfer provision of Water Code Section 1725. This is a reasonable presumption because currently the State Water Project’s storage capacity, despite a wet winter in 2010, remains well below capacity because of other priorities for flows from the Feather River. Department of Water Resources meteorologists and planners have stated publicly that it will take at least another year or two for Lake Oroville to fill from winter snowmelt and runoff. The District, in its 2009 petition, characterizes the 2008 transfer as a “2008 Pilot Water Transfer (Pilot Transfer).” Following the Pilot Transfer of 2008, the District collected data on the transfer and included information from it in its 2009 transfer petition, that time under the auspices of the 2009 Drought Water Bank, such as Tables 1 and 2 about fish flow releases and monthly flow rates at the Bay-Delta settlement agreement weirs. The District further acknowledges in its 2010 environmental information that it engaged in “similar transfers in 2008 and 2009.” This succession of one-year transfers, while nominally legal, add up to a consistent pattern over three years of nearly identical transfers from the same seller’s facilities to the same changed points of rediversion (State Water Project pumping and conveyance facilities) to nearly identical customers. In our view, the fact that the 2009 transfer was to the State Water Project and Central Valley Project service areas is immaterial—they include seven of the eight water contractors that are identified as transfer recipients in both 2008 and 2010, and four (Metropolitan, Kern County Water Agency, Napa County Flood Control and Water Conservation District, and San Bernardino Valley Municipal Water District) appear among the 2009 Drought Water Bank pool of transfer recipients a year

ago. The District states in its 2010 petition (page 4) that “under the proposed transfer, the Diversion Dam would be modified in a similar manner as under the 2009 [Drought Water Bank] transfer to allow for the flow rate of release needed to satisfy up to 10,000 AF of transfer water.” Finally, the CEQA exemption based on a declaration of drought emergency by the Governor was disallowed by Alameda County Superior Court in March 2010, and the remedy includes a requirement that DWR prepare an environmental review of the 2009 Drought Water Bank transfers. We are also aware that DWR and the US Bureau of Reclamation plan a “water transfer program” for 2010 through 2011 (and which is modeled on the 2009 Drought Water Bank which was successfully challenged), so it is a reasonable presumption that South Sutter Water District, absent a change in its fiscal situation, is likely to prepare another short-term transfer petition to provide water to this water transfer program. We urge the State Water Board to reject the short-term water transfer petition and advise the petitioner to file a long-term transfer petition instead.

- b. The proposed transfer, with nearly identical transfers having occurred in each of the two preceding years, evidences a long-term transfer subject to review under the California Environmental Quality Act.

Following on the reasoning with respect to the Water Code, C-WIN and AquAlliance allege that the proposed short-term transfer by South Sutter Water District to the State Water Project contractors would represent another increment of a “project” that is exempted from CEQA improperly. We believe that, unlike in the case of *Sierra Club v. The West Side Irrigation District* (2005), the current transfer should be treated as a long-term transfer (one that represents a transfer of water recurring over a period greater than one year), and is subject to CEQA review. The District’s proposed and actual transfers in 2008 through 2010 constitute a single project put forward by a single independent agency; environmental review has been evaded because these transfers were filed incrementally as temporary short-term petitions; only a single water right (application 14804) is involved; each incremental petition would be for identical “up to” amounts to be transferred (10,000 acre-feet); and the petitions have essentially the same terms, identified in the table above. In addition, with the vacation of the CEQA exemption on the 2009 Drought Water Bank, there really is no programmatic coverage under CEQA for transfers like this. Cumulative effects of this and other transfers have been poorly handled or not examined at all. We believe this would represent an abuse of the State Water Board’s discretion to approve this project as a short-term temporary transfer, and would violate the California Environmental Quality Act, which requires that projects be treated as “the whole of an action,” and that the environmental effects of the action be fully disclosed to the public prior to its conduct.

Individual, if serial, transfers, such as South Sutter Water District’s, confirms for C-WIN and AquAlliance the desperate need for the California Department of Water Resources to collaborate with the State Water Resources Control Board (as the steward of California’s public trust resources) to undertake a systematic programmatic environmental review under CEQA of water transfer programs that would transfer water from Sacramento Valley sources across the Delta to San Joaquin Valley and southern California users. This is necessary to gain a greater understanding of the “whole” of the actions involved in water transfers and their incremental, cumulative, and perhaps growth-inducing effects.

- c. The proposed transfer is contrary to Water Code Section 1745.10. South Sutter Water District is located mostly in southern Sutter County. Sutter County has undertaken, but has not yet adopted, a groundwater management plan for its territory. Section 1745.10 prohibits surface water transfers that rely on groundwater substitution when there is either no groundwater management plan present for the affected area, or when (if no groundwater management plan is present) the local water supplier (in this case, South Sutter Water District) determines that the water transfer will not create or contribute to long-term overdraft conditions in the affected groundwater basin. C-WIN and AquAlliance protest this short-term transfer petition from the District because the District fails to demonstrate that no long-term overdraft conditions are present in its affected groundwater basin. As noted, there is no adopted groundwater management plan in Sutter County. We refer the State Water Board to the Sutter County data on groundwater elevations cited above. While not on the scale of other areas of California, the data indicate a long-term overdraft condition exists. We believe the burden of explaining the drop in groundwater elevations lies with South Sutter Water District in this instance given reasonably available public information about this subject. The State Water Board should not allow this petition, or a long-term transfer petition, to proceed without such analysis.

3) The proposed transfer would have adverse environmental impacts.

- a. The petitioner requests approval for a year-long transfer when fisheries problems in the Bear River continue year-round. Water temperature, flow timing (particularly with respect to attraction flows), and water level issues have been identified by the petitioner and with two previous years of nearly identical transfer activity, these fishery issues need CEQA review under the aegis of a long-term transfer petition.
- b. Cumulative effects of lost Delta outflows. The District would add Banks Pumping Plant and Barker Slough Pumping Plant to its points of diversion under this petition. C-WIN and AquAlliance protest these proposed diversion points because the transfer generates inflows to the Delta, but no net outflows to Suisun Bay, Suisun Marsh, and San Francisco Bay. Instead, the transfer is “accounted for” as water that proceeds through the Delta Cross Channel, and contributes to the reverse flows in Old and Middle River that contribute to fish entrainment at Banks Pumping Plant, before being exported to the recipients of the water south of the Delta. However small a contribution these transfer water flows make on a percentage basis to Delta inflow, they are nonetheless cumulatively subtracted from Delta outflows. Loss of Delta outflow means that the low salinity zone in the Delta is smaller than it would otherwise be, and therefore critical habitat for estuarine species, including striped bass young of the year and Delta smelt, may be adversely affected by increased density-dependence relationships.

These and other cumulative effects must be analyzed as part of a programmatic environmental review under the California Environmental Quality Act to ensure all significant environmental effects of cumulating are analyzed.

- c. There may be habitat conservation plans and natural community conservation plans in the vicinity of transfer flows that could be affected by the proposed transfer.

4) Conclusion

C-WIN and AquAlliance urge the State Water Board that the requested transfer should be denied as a temporary transfer under Section 1725 of the Water Code. As a long-term transfer under Section 1735 of the Water Code, the proposed transfer should be analyzed under CEQA. The CEQA analysis should evaluate cumulative effects, not merely incremental effects.

Under what conditions may this protest be disregarded and dismissed? Not known at this time.

A true copy of this protest has been served upon the petitioner South Sutter Water District, c/o Marc Van Camp, Agent, 1771 Tribute Road, Suite A, Sacramento, CA 95814

Date 2 JUNE 2010



Protestant(s) or Authorized Representative sign here

Date 2 JUNE 2010



Protestant(s) or Authorized Representative sign here

Protests MUST be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.

Proof of Service

I hereby certify that on this day, June 2, 2010, I, Tim Stroshane, have placed in first class mail at Albany, California, a true copy of this comment letter mailed to:

**South Sutter Water District
c/o Marc Van Camp
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95814**

A handwritten signature in blue ink, appearing to read "Tim Stroshane", is positioned above a horizontal line.

Tim Stroshane

Exhibit

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2010-0017-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 10,000 ACRE-FEET OF WATER
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT
UNDER CALIFORNIA DEPARTMENT OF WATER RESOURCES
PERMIT 16482 (APPLICATION 17512)**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On February 16, 2010,

Department of Water Resources
c/o Nancy Quan, Chief
Program Development and Water Supply and Transfers
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, portions of the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) permitted Application 17512. Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer. State Water Project (SWP) water is stored in San Luis Reservoir under the provisions of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare) and the Empire West Side Irrigation District (Empire). Newton Farms and Hansen Ranches/Vista Verde Farms are farming interests that hold lands in both Tulare and WWD. Newton and Brooks Farms are farming interests that hold lands in both Empire and WWD. These parties have requested that a total of up to 10,000 acre-feet (af) of SWP water currently scheduled for use on their lands in Tulare or Empire (8,000 af from Tulare and 2,000 af from Empire) be transferred for use on their lands located within WWD. The petitioner indicated that no additional groundwater will be pumped within Tulare or Empire as a result of this transfer. The proposed temporary change would be effective for a period of one year from the date of this order. DWR submitted this petition for temporary change in place of use to facilitate this exchange.

In the absence of the proposed temporary change, the water would be used by the aforementioned parties on their lands located within Tulare or Empire. Additional groundwater would be pumped by the aforementioned parties for their lands located in WWD.

1.2 Additional Information. The petition states that if the proposed transfer is approved, no additional groundwater will be pumped within Tulare or Empire. Additionally, DWR submitted information with the petition which, given the current SWP and CVP allocations, details the water application rates (in acre-feet per acre) for each of the transferees, including both their CVP supplies and the transferred SWP water. The CVP and SWP allocations (based on the April 1 snow survey) are 30%. Based on this information, the water application rate will be 1.3 acre-feet per acre for Hansen Ranches/Vista Verde Farms, 1.8 acre-feet per acre for Newton Farms, and 1.0 acre-feet per acre for Brooks Farms.

2.0 BACKGROUND

2.1 Substance of DWR's Permit. Permit 16482 was issued to DWR on September 26, 1972, and it authorizes DWR to divert to storage up to 1,100,000 af of water between January 1 and December 31 of each year. Authorized sources under Permit 16482 are the Sacramento-San Joaquin Delta Channels, Italian Slough, and San Luis Creek. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power. The subject 10,000 af of SWP water has been stored in San Luis Reservoir under provisions of DWR's permit (set forth in State Water Resources Control Board Revised Decision 1641) and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Thus, the transfer of up to 10,000 af to WWD will have no effect on any natural streamflow or hydrologic regime in the Delta or San Luis Creek. Release rates from San Luis Reservoir may increase due to the proposed transfer.

2.2 Place of Use under the Proposed Transfer. DWR's petition requests the temporary addition of areas within WWD to the place of use of Permit 16482. These areas are located within Township 16S, Range 15E, Township 17S, Range 14E, Township 17S Range 15E, and Township 19S, Range 18E, MDB&M, and are shown on a map prepared by DWR available for viewing with the copy of the notice for this petition on the Division of Water Rights' website at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated March 4, 2010) was provided via first class mail to interested parties and by publication in the Fresno Bee on March 10, 2010. California Fisheries and Water Unlimited (CFWU) submitted timely comments to the proposed temporary change. CFWU's comments cite concerns regarding compliance with federal and State Endangered Species Act requirements, water conservation plans for WWD, Empire and Tulare, and impacts related to the underlying operations of the SWP. CFWU's comments are posted with the copy of the notice for this petition on the Division of Water Rights' website as shown above in Section 2.2 of this Order.

3.1 State Water Board Response. The water proposed for transfer consists of a portion of Tulare's and Empire's SWP entitlement under Permit 16482 which is currently stored in San Luis Reservoir under provisions of DWR's permit as amended by State Water Board Decision 1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would be used within Tulare's and Empire's service area. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544).

This Order requires WWD implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Additionally, the proposed temporary change will result in application rates between 1.0 and 1.8 acre-feet per acre. Finally, Water

Code section 1727(e) requires the State Water Board to not deny or place conditions on a temporary change to mitigate impacts that are not caused by the temporary change. Thus, this Order does not address underlying impacts of the operations of the SWP or CVP.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, § 1725.) “[C]onsumptively used’ means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” (*Ibid.*) The water available for the transfer consists of a portion of either Tulare’s or Empire’s SWP entitlement under Permit 16482 and is currently or will be stored in San Luis Reservoir under provisions of DWR’s permit as amended by State Water Board Decision 1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would remain in storage until it is delivered for use within Tulare’s service area. Accordingly, the water would be removed from use in the downstream water supply as a result of direct diversion under DWR’s permit.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) The water proposed for transfer consists of a portion of Tulare’s SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within Tulare’s service area. Although agricultural deliveries to WWD may ultimately increase the subsurface flow of saline groundwater to the San Joaquin River within 10 to 20 years, due to relatively dry conditions in 2010, the amount of water delivered to WWD in 2010 will be at or below the average annual deliveries for the years 2000 through 2009. Accordingly, the proposed temporary change will not result in a significant future increase in salinity in the San Joaquin River above what would be expected to occur as a result of average year operations. In addition, the State Water Board will require as a condition of approval that WWD implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD’s service area.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) However, the State Water Board must consider potential impacts to fish, wildlife, or other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water proposed for transfer consists of a portion of Tulare’s and Empire’s SWP entitlement under Permit 16482 which is currently stored in San Luis Reservoir under provisions of DWR’s permit as amended by State Water Board Decision 1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the

absence of the proposed transfer, the water would be used within Tulare's and Empire's service area. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime.

In general, irrigated land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as some of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's map, Generalized Depth to Shallow Ground Water, April 2009, indicates that irrigation of the areas intended for transfer within WWD have not been shown to cause drainage or selenium problems. These areas are also located such that they do not directly drain to the San Joaquin River.

In light of the above, I find that in accordance with Water Code section 1727(b)(2), the proposed transfer would have no unreasonable effects on fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

[illegible]

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 10,000 acre-feet of water is approved.

All existing terms and conditions of Permit 16482 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing through April 30, 2011.
2. Prior to commencing the transfer, DWR shall provide to the Deputy Director for Water Rights a copy of the agreement between Westlands Water District (WWD) and the Tulare Lake Basin Water Storage District and the Empire West Side Irrigation District, who are foregoing the delivery of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include 1,319 acres located on Brooks Farms, 3,461 acres located on Hansen/Vista Verde Farms, and 875 acres located on Newton Farms. These areas are located within Township 16S, Range 15E, Township 17S, Range 14E, Township 17S Range 15E, and Township 19S, Range 18E, MDB&M, and are shown on a map prepared by DWR for this transfer and titled *SWP Table A Water from Tulare Lake Basin Water Storage District and Empire West Side Irrigation District to Westlands Water District* (on file with the State Water Board under Application 17512).
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. By June 30, 2011, the permittee shall provide to the Deputy Director for Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

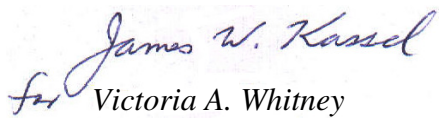
The report should also include the following information:

- a. Specific locations where the transferred water was used;
 - b. The monthly amounts of water each location received; and
 - c. The average application rate of water in the locations.
6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

7. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
8. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney
Deputy Director for Water Rights

Dated: **MAY 05 2010**

Exhibit

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

IN THE MATTER OF PERMITS 11885, 11886, 11887, 11315, 11316, 11967, 11968, 11969, 11970,
11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860 AND 15735
(APPLICATIONS 234, 1465, 5638, 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768,
17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764 AND 22316) AND LICENSE 1986
(APPLICATION 23) OF U.S. BUREAU OF RECLAMATION

PETITIONS FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 100,000 ACRE-FEET OF WATER
FROM
ARVIN-EDISON WATER STORAGE DISTRICT TO METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

SOURCES: San Joaquin River, American River, Old River, Sacramento River, Trinity River, Clear
Creek, Rock Slough

COUNTIES: Madera, Fresno, Contra Costa, Sacramento, Trinity, Shasta, Glenn, Tehama

1.0 SUBSTANCE OF PETITION

1.1 Description of the Petitions

On January 5, 2012, U.S. Bureau of Reclamation (Reclamation) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), Petitions for Temporary Change under Water Code Section 1725, et seq. Reclamation seeks a one-year modification of Permits 11885, 11886, 11887, 11315, 11316, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860 and 15735 and License 1986 to temporarily change the authorized place of use for municipal and industrial purposes to include a portion of the State Water Project (SWP) authorized place of use downstream of the Harvey Banks Pumping Plant as shown on the maps attached to the petitions. The temporary expansion of Reclamation's place of use would allow Central Valley Project (CVP) water supplies to be delivered from either the Delta Division or Friant Division into the Metropolitan Water District of Southern California (Metropolitan) service area. Delivered surface water to Metropolitan will be either water previously stored in San Luis Reservoir (San Joaquin River releases recovered and exchanged at Mendota Pool under the San Joaquin River Restoration Program (SJRRP) operations, under a separate petition), or contracted supplies scheduled for delivery to Arvin-Edison Water Storage District (Arvin-Edison) from Millerton Lake.

The petitions propose the transfer of up to 100,000 acre-feet (af).

Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval. Reclamation requests that the change remains in effect for one year from the date of approval. All other provisions of the above permits and licenses, as modified in accordance with petitions¹ previously approved by the State Water Board, would remain in effect.

¹ See water rights orders WR 2009-0033 and WR 2010-0032 DWR.

1.2 Reason for the Petitions

Arvin-Edison is a contractor with Reclamation's CVP. Arvin-Edison and Metropolitan currently operate a groundwater banking program. Under the program, Arvin-Edison pumps some of Metropolitan's water from the SWP into groundwater storage, and then returns it to Metropolitan within a year of Metropolitan's call. These petitions would enhance the program by allowing Metropolitan to directly use Arvin-Edison's CVP supplies. This would increase Arvin-Edison's flexibility in returning stored water to Metropolitan, and would allow Arvin-Edison to deliver CVP water to Metropolitan during wet periods and receive SWP water back in exchange at a later time to facilitate Arvin-Edison's use of CVP water supplies that have a limited opportunity for use under current CVP operations. Additionally, this would significantly reduce the amount of water first pumped into groundwater storage before use, reducing economic and environmental costs of pumping. The proposed change would also help to offset the impacts to Arvin-Edison of the SJRRP by increasing Arvin-Edison's ability to use wet year water supplies and by increasing the opportunities to complete the return of SJRRP releases to Arvin-Edison (and potentially other Friant Division contractors).

A change to Reclamation's permits is necessary to allow delivery of CVP water to Metropolitan. The SWP place of use already includes both Metropolitan and Arvin-Edison and thus a change in the SWP place of use is unnecessary.

2.0 BACKGROUND

2.1 Existing Place of Use

The service area of the CVP is shown on map 214-208-12581 (on file with the State Water Board under Application 5626).

2.2 Place of Use under the Proposed Transfer

The service area of the SWP is shown on maps 1878-1, 2, 3 and 4 (on file with the State Water Board under Application 5629). The petitions request the temporary addition of the SWP service area "downstream" of the Banks Pumping Plant to the Reclamation license and permits listed in Table 1.

3.0 LEGAL REQUIREMENTS FOR TEMPORARY TRANSFERS

California Water Code sections 1725 – 1735 set forth an expedited approval process for temporary petitions for change involving the transfer of water. After submitting a petition to the State Water Board, the petitioner must notice the proposed changes within 10 days. (Wat. Code, § 1726, subds. (a), (b)(d).) Commenters then have 30 days to submit comments. (*Id.* at subd. (f).) The State Water Board then renders a decision within 35 days of commencement of an investigation or the publishing of the notice, whichever is later, although the Board extends a decision for 20 more days due to comments or good cause. (*Id.* at subds. (g)(1)-(2).) The Board may further extend the decision-making period in order to make the required findings, with the petitioner's consent. (*Id.* at subd. (g)(3).) The Board makes a decision on the record, unless it determines that a hearing is necessary in order to make the required findings. (*Id.* at subd. (g)(3).) The Board shall not alter the terms and conditions proposed by the petitioner unless it is necessary to do so in order to carry out the transfer. (Wat. Code, § 1727, subd. (d).)

Temporary change petitions receive approval where the water transfer: "would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of water, and would not unreasonably affect fish, wildlife or other instream beneficial uses." (Wat. Code, §§ 1725, 1727.) Contractors are "legal users of water" for purposes of the no injury rule for transfers. However, the extent to which they are protected from injury is only to the extent that their contractual rights are violated: a harm within the bounds permitted by their contract is not legally cognizable. (*State Water Resources Control Board Cases* (2006) 135 Cal.App.4th 674, 803-805).

4.0 PUBLIC NOTICE AND COMMENTS

On January 18, 2012, public notice of the petition for temporary change was provided as follows: 1) via first class mail to interested parties; 2) by posting on the Division's website; 3) via the State Water Board's Lyris email notification program; 4) and by publication in the Redding Record Searchlight, the Sacramento Bee and the Fresno Bee. The State Water Board received two comment letters.

4.1 Comments of Richard Morat

Mr. Morat requested a response to and consideration of four questions related to the petitions:

- a) whether the term "appropriated" means the same as water diverted and delivered out of stream,
- b) what are the adverse but reasonable impacts to fish and wildlife that are likely to occur,
- c) whether the Petitioner's statement that under the transfer Arvin-Edison could potentially use more of its CVP water is consistent with all other information on the proposed action, and
- d) whether the Petitioner's statement that the transfer would enhance the return quantity, timing and water quality is consistent with all other information on the proposed action.

State Water Board Response: Division staff contacted Mr. Morat several times to discuss his concerns, and Mr. Morat indicated that he did not have any additional questions or information regarding the transfer. A summary of the responses to his queries follows.

- a) "Appropriated" means diverted from a stream system under an appropriative basis of right. This does involve diverting water from the stream and delivering it outside the stream for beneficial use.
- b) Since there will be no increase in CVP appropriations and all diversions will be pumped consistent with the criteria and protective measures contained in D1641, the biological opinions for the protection of Sacramento River Winter-run Chinook salmon, Delta smelt, spring-run Chinook salmon, and steelhead, no adverse impacts to fish and wildlife are likely to occur.
- c) and d) These statements are consistent with the other information on the proposed action.

4.2 Joint Comments of San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and San Luis & Delta-Mendota Water Authority (Authority)

The Exchange Contractors, Authority and Arvin-Edison entered into a February 22, 2012 agreement limiting Arvin-Edison's actions under the transfer, in exchange for the Exchange Contractors and Authority not providing comments to the Reclamation petitions. The Exchange Contractors and Authority ask that the conditions Arvin-Edison agreed to be incorporated into the transfer order. The terms are as follows:

- (a) The transfer is not precedent setting;
- (b) The transfer will not interfere with or harm Reclamation's ability to meet any of their CVP contractual obligations including their obligations under the Second Amended Exchange Contract or the 1939 Purchase Contract between Miller and Lux and the Department of Interior;
- (c) The transfer will not cause a net reduction in CVP water supply to contractors South of the Delta;

(d) Recirculation water in San Luis Reservoir will not be moved to Metropolitan until after the "low point" in San Luis Reservoir has occurred;

(e) There is no resultant change to the Order Approving Temporary Transfer and Change, issued In The Matter of Permits 11885, 11886 and 11887 (Applications 234, 1465 and 5638) of U.S. Bureau of Reclamation, dated September 30, 2011; and

(f) Arvin-Edison will provide five days advance notice to the First Parties prior to any exchange being implemented between Arvin-Edison and Metropolitan. Notice shall be provided by email to the First Party signatories.

In a February 22, 2012 email to Division staff, the Authority explained the reasoning behind some of the terms of the joint agreement:

The San Luis Reservoir is one of California's largest reservoirs and a critical component of the CVP and [SWP]. Each year, water from Sacramento-San Joaquin River Delta is delivered to San Luis Reservoir via the California Aqueduct and Delta-Mendota Canal for storage. This water is subsequently released, in part, for use by the Authority's member agencies. San Luis Reservoir "low point" which generally occurs in late summer is an issue of operational concern that is addressed annually. Steps are taken as much as possible to avoid "low point" issues. When water levels in San Luis Reservoir reach low levels water quality becomes an issue due to algal blooms and the water becomes unsuitable for agricultural water users with drip irrigation systems and to municipal and industrial water users due to their inability to treat the water.

The [Arvin-Edison]-[Metropolitan] Transfer/Exchange, as initially proposed, has the potential to increase the occurrences of San Luis Reservoir to reach "low point" earlier in the year. Those results could have occurred from implementing the [Arvin-Edison]-[Metropolitan] Transfer/Exchange, for example, if Reclamation were to release water from San Luis Reservoir prior to low point that is not "replaced" until after low point or that would never have been released prior to low point. This concern is not hypothetical. Nothing in the petitions pending before the State Water Board would preclude Reclamation from releasing water from the San Luis Reservoir for delivery to [Metropolitan] with the hope that "debt" would be subsequently repaid with the recapture of water available under the [SJRRP]. Likewise, nothing in the petitions pending before the State Water Board would preclude Reclamation from releasing water from San Luis Reservoir prior to low point that, absent the [Arvin-Edison]-[Metropolitan] Transfer/Exchange, would not be released until after San Luis Reservoir "low point." The conditions to which the Authority, Exchange Contractors and Arvin-Edison agreed avoid those undue risks of harm.

State Water Board Response: Exchange Contractors and the Authority are contractors with Reclamation to receive CVP water, like Arvin-Edison. The Exchange Contractors receive water from the CVP by virtue of their contracts with Reclamation. Pursuant to these agreements, the Exchange Contractors forego diversion under their senior water rights on the San Joaquin River in exchange for delivery of an equal amount and supply from the CVP from sources other than the San Joaquin River. The water is delivered via the Delta-Mendota Canal. Authority members are also contractors with Reclamation, and have historically received deliveries of CVP water for irrigation along the San Joaquin Valley's West side and for wetlands situated in the Pacific Flyway.

The State Water Board may only condition a temporary transfer as necessary to make the findings required under Water Code sections 1725 and 1727, or to enforce other requirements described under Water Code sections 1725 - 1732. (Wat. Code, § 1727, subd. (d).) Neither the Exchange Contractors nor the Authority has alleged that the concerns they have raised would violate their contractual rights to a specific quantity or quality of water, and neither submitted their contract terms. Reclamation's petition indicates that the transfer will not cause them to violate the contract amounts, and Reclamation staff indicated on February 24, 2012, that the contracts have no explicit term regarding water quality.

Additionally, the environmental and water impact analysis petitioners submitted also indicates that the low point will not affect either the public trust or other legal users of water under this temporary transfer. The Petitioners and Arvin-Edison prepared a Draft Environmental Assessment/Initial Study and Negative Declaration (IS/ND) for the transfer/exchange dated February 2012, SCH #2012021031. The IS/ND does not identify any adverse impacts of the transfer, or propose any mitigation measures, related to water quality, frequency or timing of low point in San Luis Reservoir. The IS/ND states that the Cross Valley Canal, CVP and SWP facilities would not be impacted as the transfer must be scheduled and approved by Kern County Water Agency (KCWA), Reclamation, and Department of Water Resources, respectively. The project will be operated in accordance with Section VII of the Operational Guidelines for Water Service, Friant Division CVP, dated March 18, 2005. Additionally, the exchange must be conducted in a manner that would not harm other CVP contractors or other CVP contractual or environmental obligations, or SWP contractors. Therefore, the IS/ND indicates that normal obligations by the overseeing agencies to deliver water to their contractors and other obligations would not be impacted.

As there is no allegation of interference with contract rights, and because the evidence before the State Water Board indicates that the transfer will not cause public trust or water right impacts, the Board will not include proposed terms (c) and (d).

The State Water Board has incorporated a "no injury" term for water contractors, which includes the contracts addressed in proposed term (b) as Term 5 of this Order. Incorporation of this term allows the "no injury" requirement for approving a petition to become an enforceable requirement throughout the one-year transfer. While the State Water Board agrees that this order does not amend the terms and conditions of any other State Water Board order, except those adopting the permit terms hereby amended, inclusion of proposed term (e) is a legal conclusion not necessary to approval of the temporary order, and is therefore inappropriate to include as a term or condition. However, it is worth noting that this order does not amend Reclamation's permits or any other orders, including the Order Approving Temporary Transfer and Change regarding Reclamation's Permit Nos. 11885, 11886, and 11887, dated September 30, 2011. Orders issued by the Deputy Director for the Division are not precedent, so it would be redundant to include term (a). Exchange Contractors and the Authority have provided no evidence that requiring Arvin-Edison to give them notice prior to any transfer is required to make any required finding for a temporary transfer. Therefore, the State Water Board declines to include term (f) in this Order.

5.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Petitioners filed the petition for a temporary transfer of water pursuant to Water Code section 1725, et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption.

6.0 REQUIRED FINDINGS OF FACT

6.1 Transfer Only Involves Water That Would Have Been Consumptively Used or Stored

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." According to the petition and the accompanying IS/MD water proposed for transfer/exchange consists of either:

- a) Water stored pursuant to the specified license and permits of the CVP; or

- b) Water directly diverted pursuant to the specified license and permits of the CVP for use outside of the Delta watershed, and thus removed from use in the downstream water supply.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used or stored in the absence of the proposed temporary change.

6.2 No Injury to Other Legal Users of Water

Before approving a temporary change due to a transfer or exchange of water pursuant to Article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat Code, § 1727, subd. (b)(1).)

The water proposed for transfer/exchange consists of portions of the CVP entitlement of Arvin-Edison and the SWP entitlement of Metropolitan. In the absence of the proposed transfer, Arvin-Edison's Friant CVP water would be diverted to groundwater storage and an equivalent amount of previously-stored SWP water would be pumped from Arvin-Edison's groundwater storage for delivery to Metropolitan. The petitions state and the IS/ND supports that the total quantity of water delivered to SWP or CVP contractors as a result of the change will not exceed historic deliveries to any individual water user or be applied to any service areas that do not already receive water from the SWP or CVP. The petitions and the IS/ND also indicate that approval will not result in a reduction in San Joaquin River flows, an increase in Delta exports, or a change in upstream river or reservoir operations. Further, the petitions state, and the IS/ND supports, that there will be no increase in groundwater pumping levels, as Arvin-Edison is proposing to pump water that has been previously pumped for delivery to Metropolitan.

This order does not modify or amend the rights and obligations of Reclamation and the Exchange Contractors under the Second Amended Exchange Contract for Exchange of Waters, Contract Ilr-1144, dated February 14, 1968, or the 1939 Purchase Contract between Miller and Lux and the Department of Interior, or of any other contract that Reclamation has entered into with other CVP water users.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed temporary change will not injure any legal user of the water.

6.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The petitions and the IS/ND indicate that the total quantity of water pumped by the CVP from the Delta during this period will not change as a result of this transfer/exchange. Instead, the transfer/exchange would provide the CVP with flexibility to deliver water to its contractors in a more efficient manner. Water diverted from the Delta at the Jones or Banks Pumping Plants is subject to the provisions of the CVP and SWP license and permits as amended by Decision 1641 and is also subject to the requirements of Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Approval of the petitions will not affect the compliance with the water quality objectives specified in Decision 1641 over which the projects have control, or any other orders adopted by the State Water Board. Therefore, the proposed temporary change would have no significant effect on the natural streamflow or hydrologic regime within the Delta. None of the agencies involved in the proposed exchange return flow to the San Joaquin River.

The IS/ND lists three environmental commitments: (a) no conversion of any land fallowed and untilled for three or more years may occur during the transfer, (b) exchange involving CVP and SWP water cannot alter the flow regime of natural water bodies, such as rivers, streams, etc. in order that the transfer not have a detrimental effect on fish or wildlife, or their habitats, and (c) existing Aqueduct

Pump-in Facilitation Group guidelines would be followed by both Arvin-Edison and KCWA when introducing water into the Aqueduct to insure that water quality would not be adversely impacted. These are incorporated as a condition of this order.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

7.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

8.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727, and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of water.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

ORDER

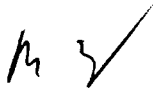
NOW, THEREFORE, IT IS ORDERED that the petitions filed for temporary change in the place of use, under Reclamation License 1986 and Permits 11885, 11886, 11887, 11315, 11316, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860 and 15735 for transfer of up to 100,000 af of water is approved.

All existing terms and conditions of License 1986 and Permits 11885, 11886, 11887, 11315, 11316, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860 and 15735 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing for one year thereafter.
2. The place of use under License 1986 and Permits 11885, 11886, 11887, 11315, 11316, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860 and 15735 is temporarily expanded to include the portions of the SWP service area shown on a map titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to CVP Authorized Place of Use* (August 18, 2010), on file with the State Water Board under Application 23.
3. Water transferred/exchanged pursuant to this Order shall be limited to 100,000 af of CVP water to Metropolitan.
4. Reclamation shall not increase its allocation of water to Arvin-Edison beyond the quantity authorized by existing contract for purposes of this transfer/exchange.

5. This order shall not be construed as modifying or amending the rights and obligations of the parties to any contracts between Reclamation and users of CVP water.
6. Within 90 days of the completion of the transfer, but no later than June 15, 2013, the Petitioners shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. The monthly and total volumes of water delivered to Metropolitan pursuant to this Order.
 - b. The monthly and total amounts of water delivered from Arvin-Edison to Metropolitan pursuant to this Order.
 - c. Documentation that the water transferred/exchanged between Metropolitan and Arvin-Edison did not result in an increase in water diverted to CVP facilities from the source waters of Reclamation's permits beyond the quantity that would otherwise have been diverted absent the transfer.
7. Reclamation shall comply with the environmental commitments listed in the IS/ND.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: **APR 02 2012**

Exhibit

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
WR ORDER 2001-15-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
TEMPORARY CHANGE INVOLVING THE TRANSFER OF
UP TO 3,975 ACRE-FEET OF WATER
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT
UNDER CALIFORNIA DEPARTMENT OF WATER RESOURCES'
PERMIT 16482 (APPLICATION 17512)**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 16, 2001,

Department of Water Resources
c/o Nancy Quan, Chief
Project Water Contracts Branch
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) permitted Application 17512. The temporary change would be effective for a period not to exceed one year.

1.1 Description of the Transfer State Water Project (SWP) water is stored in San Luis Reservoir and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare). DWR proposes a change in place of use to facilitate the transfer of up to 3,975 acre-feet (af) of Tulare's SWP water to WWD. Vista Verde Farms (VVF) and Venture Farms (VF) own property (3,461 acres for VVF and 875 acres for VF) located within both Tulare's and WWD's service area. These landowners wish to exchange up to 3,975 af of SWP water currently scheduled for use within Tulare's service area to their landholdings in WWD. The total allotment of irrigation water within the area of interest would be approximately 1.2 acre-feet per acre (af/ac) for VVF lands in WWD and 2.9 for VF lands in WWD. In the absence of the proposed transfer, the water would be used by the aforementioned parties on lands located within the Tulare Lake Basin Water Storage District.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972, and it authorizes DWR to collect up to 1,100,000 af per annum by storage, to be diverted from the Sacramento and San Joaquin watersheds; and San Luis Creek between January 1 and December 31. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power. The subject 3,975 af of SWP water has been stored in San Luis Reservoir under provisions of DWR's permits, conditions set forth in the 1995 Bay-Delta water quality objectives, SWRCB Order WR 98-9, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries under the Endangered Species Act. Thus, the transfer of up to 3,975 af to WWD should have no effect on any natural streamflow or hydrologic regime. Release rates from San Luis Reservoir may increase due to the proposed transfer.

2.2 Place of Use under the Proposed Transfer WWD service area (as shown on WWD's Generalized Depth to Shallow Groundwater, April 1999 on file with the SWRCB under permitted Application 17512) would be temporarily added to the place of use of Permit 16482.

3.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer consists of a portion of Tulare Lake Basin Water Storage District's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within the service area of the Tulare Lake Basin Water Storage District.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water and that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

4.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). In addition, temporary changes involving the transfer of water that was previously stored are exempt from the requirements of CEQA. However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water available for the transfer is currently stored in SWP's portion of San Luis Reservoir, and therefore would have no effect on any natural streamflow or hydrologic regime. The water was stored in San Luis Reservoir under provisions of DWR's permits, and conditions set forth in the 1995 Bay-Delta water quality objectives, SWRCB Order WR 98-9, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries under the Endangered Species Act.

4.1 Environmental Issues within WWD The SWP water transferred will be delivered to WWD's Priority II, and III Areas. In general, land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops.

None of the land in WWD discharges agricultural drainage directly to surface waters in the San Joaquin River watershed. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's Generalized Depth to Shallow Ground Water, April 1999 indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. The lands scheduled to receive the water from this transfer are among the lands that do not cause surface water problems due to agricultural drainage.

In light of the above, I find that in accordance with Water Code section 1727(b)(2) that the proposed transfer would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

5.0 COMMENTS RECEIVED ON THE PROPOSED TRANSFER/EXCHANGE

No comments were received by the Division regarding the proposed transfer/exchange.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On April 29, 1999, the SWRCB adopted Resolution 99-031, continuing the delegation of authority to approve petitions for temporary change to the Chief of the Division of Water Rights, provided the necessary statutory findings can be made.

7.0 CONCLUSIONS

The SWRCB has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' Permitted Application 17512 for the transfer of up to 3,975 af of water is approved.

All existing terms and conditions of the subject permit remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing for one year.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement with the Tulare Lake Basin Water Storage District, who is foregoing the delivery of the subject water.
3. The place of use is temporarily changed as follows:

SWP's permitted Application 17512 -- The authorized place of use is expanded to include the CVP's San Joaquin Valley service area as referenced on map 214-208-12581 on file with the SWRCB under permitted Application 5626. Current boundaries of WWD are shown on WWD's Generalized Depth to Shallow Groundwater, April 1999 on file with the SWRCB under permitted Application 17512.

4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. Within 60 days of the completion of the transfer/exchange, but no later than October 1, 2002, the permittee shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

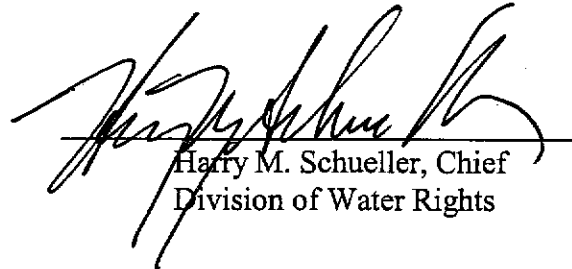
The report should include the following information:

1. General locations where the transferred water was used;
2. The monthly amounts of water each location received; and
3. The average application rate of water in the locations.

6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the SWRCB also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

7. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
8. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.



Harry M. Schueller, Chief
Division of Water Rights

Dated: **JUL 5 2001**

Exhibit

O

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

WR ORDER 2002-0007-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 5,000 ACRE-FEET OF WATER
FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 21, 2002,

Department of Water Resources
c/o Nancy Quan, Chief
Project Water Contracts Branch
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) permitted Application 17512. Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer State Water Project (SWP) water is stored in San Luis Reservoir and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare). DWR proposes a change in place of use to facilitate the transfer of up to 5,000 acre-feet (af) of Tulare's SWP water to WWD. Vista Verde Farms (VVF) and Venture Farms (VF) own property (3,461 acres for VVF and 875 acres for VF) located within both Tulare's and WWD's service area. These landowners wish to exchange up to 5,000 af of SWP water currently scheduled for use within Tulare's service area to their landholdings in WWD. The total allotment of irrigation water within the area of interest would be approximately 1.6 acre-feet per acre (af/ac) for VVF lands in WWD and 3.8 for VF lands in WWD. In the absence of the proposed transfer, the water would be used by the aforementioned parties on lands located within the Tulare Lake Basin Water Storage District.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972, and it authorizes DWR to collect up to 1,100,000 acre feet per annum by storage, to be diverted from the Sacramento and San Joaquin watersheds; and San Luis Creek between January 1 and December 31. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife

enhancement, and to generate incidental power. The subject 5,000 af of SWP water is either stored in San Luis Reservoir or will be stored under provisions of DWR's permits, conditions set forth in the 1995 Bay-Delta water quality objectives, SWRCB Order WR 98-9, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries under the Endangered Species Act. Instantaneous release rates from San Luis Reservoir may increase due to the proposed transfer.

2.2 Place of Use under the Proposed Transfer DWR's petition requested that WWD's service area (as shown on WWD's Generalized Depth to Shallow Groundwater, October 2001 submitted with the petition) be temporarily added to the place of use of Permit 16482.

3.0 COMMENTS RECEIVED ON THE PROPOSED TRANSFER/EXCHANGE

The Division received timely comments from the Central Delta Water Agency (CDWA), on behalf of itself, the South Delta Water Agency (SDWA), and Alex Hildebrand. CDWA's comments and the SWRCB's response are summarized below.

CDWA opposed the proposed transfer on the basis that "the delivery of water over and above levels that existed prior to the implementation of the San Luis Unit of the CVP constitute an unreasonable use of water in violation of California Constitution Article 10, section 2." CDWA asserted that "the application of supplemental water to the WWD area will add water to a hydrologic regime which is causing water logging of the WWD lands along the trough of the valley (sometimes referred to as drainage impacted lands) and which is providing a groundwater gradient which causes saline waters to enter the San Joaquin River." CDWA concluded that the increase in salinity of San Joaquin River water resulting from the proposed transfer would injure themselves, SDWA, and Alex Hildebrand.

SWRCB Response: Approximately 42,000 acres within the northern portion of WWD (north of Township 16S, MDB&M) have been identified as areas with potential for surface and subsurface drainage to the San Joaquin River. Though DWR's petition requested the temporary addition of all of WWD's service area to the place of use under Permit 16482, only 4,336 acres are scheduled to receive water. These areas are located south of the potential drainage areas (within Township 17S, Range 15E and Township 19S, Range 18E, MDB&M). Within these areas of WWD, surface drainage and groundwater gradients trend away from the San Joaquin River. Therefore, the application of water to these specific areas within WWD should not significantly increase salinity concentration within the San Joaquin River and injure downstream users such as CDWA, SDWA, and Alex Hildebrand. Accordingly, this order will authorize the addition of only Township 17S, Range 15E and Township 19S, Range 18E, MDB&M, to the place of use under Permit 16482.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer consists of a portion of Tulare Lake Basin Water Storage District's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within the service area of the Tulare Lake Basin Water Storage District.

Additionally, in response to comments from CDWA asserting that the proposed transfer would result in an increase in salinity concentrations in the San Joaquin River causing injury to itself, SDWA, and Alex Hildebrand, this order limits the place of use to specific areas within WWD which do not have significant potential for either surface drainage to or groundwater gradients towards the San Joaquin River.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water and that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

5.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water available for the transfer is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits, and conditions set forth in the 1995 Bay-Delta water quality objectives, SWRCB Order WR 98-9, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries under the Endangered Species Act. Therefore, the diversion of this water would have no significant adverse effect on any natural streamflow or hydrologic regime.

5.1 Environmental Issues within WWD In general, land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's Generalized Depth to Shallow Ground Water, October 2001 indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. The lands scheduled to receive the water from this transfer are among the lands that do not cause surface water problems due to agricultural drainage.

In light of the above, I find that in accordance with Water Code section 1727(b)(2) that the proposed transfer would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On May 16, 2002, the SWRCB adopted Resolution 2002-0106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the SWRCB conducts a hearing to accept additional evidence.

7.0 CONCLUSIONS

The SWRCB has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' Permitted Application 17512 for the transfer of up to 5,000 af of water is approved.

All existing terms and conditions of the subject permit remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing for one year.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement with the Tulare Lake Basin Water Storage District, who is foregoing the delivery of the subject water.
3. The place of use are temporarily changed as follows:

SWP's permitted Application 17512 -- The authorized place of use is expanded to include Township 17S, Range 15E and Township 19S, Range 18E, MDB&M.
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. Within 60 days of the completion of the transfer/exchange, but no later than October 1, 2003, the permittee shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should include the following information:

- a. Specific locations where the transferred water was used;
 - b. The monthly amounts of water each location received; and
 - c. The average application rate of water in the locations.
6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the SWRCB also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.
 7. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act

authorized under this temporary transfer, the permittee shall obtain authorization for an incidental

take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.

8. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

Original signed by

*Edward C. Anton, Chief
Division of Water Rights*

Dated: July 25, 2002

Exhibit

P

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2003 – 0011 - DWR

IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 6,300 ACRE-FEET OF WATER
FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 1, 2003,

Department of Water Resources
c/o Nancy Quan, Chief
Project Water Contracts Branch
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, a portion of the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512). Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer State Water Project (SWP) water is stored in San Luis Reservoir and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (TLBWSD). DWR proposes a change in the place of use to facilitate the transfer of up to 6,300 acre-feet (af) of TLBWSD's State Water Project water to WWD.

Vista Verde Farms and Newton Farms own property within both the TLBWSD and WWD service areas. These farm interests wish to exchange up to 6,300 af of SWP water currently scheduled for use on their landholdings within the TLBWSD service area to their landholdings in WWD. The Vista Verde Farms would receive a total allotment of 3,800 af of irrigation water for the approximate 3,461 acres of landholdings in the WWD service area. Newton farms would

receive a total allotment of 2,500 af of irrigation water for the approximate 875 acres of landholdings within the WWD service area. In the absence of the proposed temporary change transfer, the water would be used by the aforementioned parties on lands located within the Tulare Lake Basin Water Storage District.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972. It authorizes DWR to collect up to 1,100,000 acre feet per annum by storage, to be diverted from the Sacramento and San Joaquin River watersheds, and San Luis Creek between January 1 and December 31. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power. The subject 6,300 af of SWP water is currently stored or will be stored under provisions of DWR's permits, as amended by SWRCB Decision 1641, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Release rates from San Luis Reservoir may be slightly different due to the proposed transfer.

2.2 Place of Use under the Proposed Transfer DWR's petition requested that WWD's service area (as shown on the location map entitled, "Areas of Water Transfer from Kern County Water Agency and Tulare Lake Basin Water Storage District to Westlands Water District Under State Water Right Permit 16482, Application 17512" (March 25, 2003) submitted with the petition) be temporarily added to the place of use of Permit 16482.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER/EXCHANGE

Public notice of the petition for temporary change (dated April 11, 2003) was provided via regular mail to interested parties and by publication in the Fresno Bee on April 18, 2003. The Division of Water Rights did not receive any timely comments to the public notice.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer consists of a portion of Tulare Lake Basin Water Storage District's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within the service area of the Tulare Lake Basin Water Storage District.

The DWR petition states that the subject water is currently in storage in San Luis Reservoir; and therefore, there will be no effect on streamflow or hydrologic regime. Although the total amount of water used will not change, the delivery rates from San Luis Reservoir may differ slightly. DWR states that the scheduling of the deliveries will be coordinated with the United States Bureau of Reclamation (USBR) so as not to adversely impact any contractor deliveries.

The quantity of SWP water associated with this transfer has been made available through the use of alternate local supplies to farmlands within TLBWSB. Vista Verde Farms will utilize water from Kings River, Corcoran Irrigation District, and groundwater (at historic pumping rates). Newton Farms operates one well that they will continue to operate at historic levels. They also intend to use local Districts as an alternate local water source.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water and that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

5.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.). However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code 1727(b)(2).

5.1 Environmental Issues with the Bay-Delta and its Tributaries The water available for the transfer is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits, as amended by SWRCB Decision 1641, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Therefore, the diversion of this water will have no unreasonable effect on fish, wildlife or other instream beneficial uses in the Delta or upstream areas.

5.2 Environmental Issues within WWD Westlands Water District has programs to encourage water conservation and drainage reduction in its district. DWR's Petition for Temporary Change states that in general, land within the WWD has complete tailwater control within each field. Water planned for transfer to WWD will be delivered to lands within the western and southern half of the District. Most of the lands to receive the transferred water are located west of the California Aqueduct. Specifically, the lands are no further north and west than Township 17 South, Range 15 East, and no further east than Township 20 South, Range 18 East, Mount Diablo Base & Meridian. The lands to receive increased water deliveries due to this transfer have not been shown to have drainage or selenium problems. Those areas within the WWD having selenium and other drainage problems are located in low lying areas of the northern quarter of WWD. WWD irrigation drainage is not discharged to the San Joaquin River system.

In light of the above, I find that in accordance with Water Code section 1727(b)(2) that the proposed transfer would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On May 16, 2002, the SWRCB adopted Resolution 2002-106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the SWRCB conducts a hearing to accept additional evidence.

7.0 CONCLUSIONS

The SWRCB has adequate information in its files to make the evaluation required by Water Code section 1727, and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' Permit 16482 for the transfer of up to 6,300 af of water is approved.

All existing terms and conditions of the subject permit remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing for one year.
2. Prior to commencing the transfer, Department of Water Resources shall provide the Chief of the Division of Water Rights a copy of the agreement with the Tulare Lake Basin Water Storage District, which is foregoing the delivery of the subject water.
3. The places of use of the Department of Water Resources Permit 16482 are temporarily changed as follows:

The authorized place of use is expanded to include areas within the Westlands Water District shown on map entitled "Areas of Water Transfer from Kern County Water Agency and Tulare Lake Basin Water Storage District to Westlands Water District Under State Water Right Permit 16482, Application 17512", dated March 25, 2003, on file with the SWRCB under Permit 16482.

4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Prior to commencing the transfer, the Department of Water Resources shall ensure that all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside Westlands Water District's service area are implemented. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. Within 60 days of the completion of the transfer/exchange, but no later than August 1, 2004, the permittee shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should include the following information:

- a. Specific locations where the transferred water was used;
- b. The monthly amounts of water each location received; and
- c. The average application rate of water in the locations.

6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the SWRCB also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft of the source.

7. This Order does not authorize any act which results in the taking of threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a “take” will result from any act authorized under this temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
8. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

*ORIGINAL SIGNED BY
VICTORIA A. WHITNEY
for*

*Edward C. Anton, Chief
Division of Water Rights*

Date: May 23, 2003

Exhibit

Q

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2005 - 0009

In the Matter of
Permits and Licenses¹
of the

**CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND THE
UNITED STATES BUREAU OF RECLAMATION**

SOURCE: Sacramento and San Joaquin rivers and their tributaries, and the
Sacramento-San Joaquin Delta Estuary

COUNTY: San Joaquin

ORDER DENYING PETITION FOR TEMPORARY URGENCY CHANGE

BY CHAIR BAGGETT²:

1.0 INTRODUCTION

On February 18, 2005, the United States Bureau of Reclamation (Bureau) and the California Department of Water Resources (DWR) jointly filed a petition for temporary urgency change with the State Water Resources Control Board (State Water Board). Simultaneously, these parties also filed a long-term petition for change that will be processed routinely and is not the subject of this order. The petition for a temporary urgency change requests temporary relief from the requirement in the Bureau's and the DWR's water right permits, that the Bureau and the DWR meet the salinity objective of 0.7 millimhos per centimeter (mmhos/cm) Electrical

¹ The DWR seeks a change in its Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A), and the Bureau seeks a change in its License 1986 (Application 23) and in its Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12725, 12726, 12727, 11315, 11316, 16597, 20245, 11968, 11969, 11970, 12860, 11971, 11972, 11973, 12364, 16600, and 15735 (Applications 234, 1465, 5626, 5628, 5638, 9363, 9364, 9366, 9367, 9368, 13370, 13371, 14858A, 14858B, 15374, 15375, 15376, 15764, 16767, 15768, 17374, 17376, 19304, and 22316).

² Water Code section 1435(d) authorizes the State Water Board to delegate any function under chapter 6.6 (§§ 1435-1442) to any officer or employee of the board. State Water Board Resolution 2002-0106, at paragraph 1.3, delegates authority to a board member individually to authorize or decline to authorize issuance or renewal of a conditional temporary urgency change pursuant to chapter 6.6 of part 2 of division 2 of the Water Code.

Conductivity (EC) value, calculated as maximum 30-day running average of mean daily EC, for agricultural beneficial uses in the southern Delta at stations C-6, C-8, and P-12,³ from April 1, 2005 through September 28, 2005. These stations are referred to herein as the interior southern Delta stations, to distinguish them from the Vernalis station, where the DWR and the Bureau already are required to meet the 0.7 mmhos/cm EC objective.

2.0 AUTHORITY TO ACT ON A TEMPORARY URGENCY CHANGE PETITION

The State Water Board is authorized to issue a conditional, temporary change order in response to a petition for a temporary urgency change of a water right permit or license. Before issuing a change order, the board shall make all of the following findings:

- “(1) The permittee or licensee has an urgent need to make the proposed change.
- (2) The proposed change may be made without injury to any other lawful user of water.
- (3) The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.
- (4) The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.” (Wat. Code, § 1435(b).)

“Urgent need,” in the first required finding, is defined as:

“the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find a petitioner's need to be urgent if the board in its judgment concludes, if applicable, that the petitioner has not exercised due diligence either (1) in petitioning for a change pursuant to provisions of this division other than this chapter, or (2) in pursuing that petition for change.” (Wat. Code, § 1435(c).)

³ The geographic locations of these stations are: the San Joaquin River at the Brandt Bridge site (C-6), the Old River near Middle River (C-8), and the Old River at Tracy Road Bridge (P-12).

3.0 DISCUSSION

The objective for salinity at the three stations in the interior southern Delta was first established in the 1978 Delta Plan for the protection of agricultural beneficial uses in the southern Delta. The objective specifies that it is to be effective in all year types, but “is to become effective only upon the completion of suitable circulation and water supply facilities.” Footnote 4 on page VI-35 of the 1978 Delta Plan states, regarding the objective, “If contracts to ensure such facilities and water supplies are not executed by January 1, 1980, the Board will take appropriate enforcement actions to prevent encroachment on riparian rights in the southern Delta.” The 0.7 mmhos/cm EC value of the objective for April through August currently is scheduled to go into effect on April 1, 2005.

In Decision 1641 (D-1641), adopted December 29, 1999 and amended March 15, 2000, the State Water Board added condition 6 on page 159 of D-1641 to the permits of the DWR, and added condition 1 on pages 159-160 and condition 1 on pages 160-161 of D-1641 to the permits and license of the Bureau. These conditions require that under the permits and license listed herein the DWR and the Bureau meet the water quality objectives for agricultural beneficial uses in the southern Delta as specified in Table 2 on page 182 of D-1641. The salinity objective for the September through March period is 1.0 mmhos/cm. The DWR and the Bureau have been meeting the 1.0 EC objective year-round since the State Water Board adopted D-1641. Footnote 5 on Table 2 of D-1641 requires that the DWR and the Bureau meet the 0.7 EC objective at the three interior southern Delta stations for the first time commencing on April 1, 2005.⁴

During the hearing leading to D-1641, DWR’s witnesses told the State Water Board that it would complete permanent, operable, barriers in the channels of the southern Delta by 2005 to improve water levels and circulation, and that the barriers would enable the DWR and the Bureau to approach meeting the 0.7 EC objective. Meanwhile, the DWR and the Bureau have been

⁴ Footnote 5 states: “The 0.7 EC objective becomes effective on April 1, 2005. The DWR and the USBR shall meet 1.0 EC at these stations year round until April 1, 2005. The 0.7 EC objective is replaced by the 1.0 EC objective from April through August after April 1, 2005 if permanent barriers are constructed, or equivalent measures are implemented, in the southern Delta and an operations plan that reasonably protects southern Delta agriculture is prepared by the DWR and the USBR and approved by the Executive Director of the SWRCB. The SWRCB will review the salinity objectives for the southern Delta in the next review of the Bay-Delta objectives following construction of the barriers.”

constructing and removing temporary rock barriers in the channels annually. The temporary barriers help, but are not adequate to meet the 0.7 EC objective. In D-1641, adopted in March 2000, the State Water Board conditioned the permits and license of the DWR and the Bureau so that they would not be required to meet the 0.7 EC objective in April 2005 if (1) the permanent barriers had been constructed or equivalent measures were implemented and (2) the DWR and the Bureau had prepared an operations plan acceptable to the Executive Director of the State Water Board that reasonably protects southern Delta agriculture.

3.1 The Petition

In the temporary urgency change petition, the Bureau and DWR are requesting temporary relief from meeting the 0.7 EC objective during 2005. The Bureau and the DWR propose to meet the 1.0 EC objective during the April through August period, as they have since 2000, and to install temporary rock barriers and take other measures to protect agricultural beneficial uses in the southern Delta. They have filed a separate petition under Water Code section 1700, et seq., requesting relief from meeting the 0.7 EC value through December 2008.

The DWR and the Bureau state that the reason for requesting the delay is that the construction of the permanent operable barriers has been delayed by multiple factors, most of which are beyond their control. These matters include discussions with other CALFED agencies and changes in the program for improving the southern Delta agricultural and fish protection measures, including a reduction in the planned increase in pumping capacity at the Banks Pumping Plant to a maximum capacity of 8,500 cubic feet per second (cfs) rather than the 10,300 cfs capacity originally planned. In 2003 and 2004, the Bureau and DWR prepared a biological assessment as part of the process to obtain new biological opinions for Delta smelt and salmonids. The Bureau's Operations Criteria and Plan (OCAP) that it prepared as part of the biological assessment included the proposed permanent barriers and the 8,500 cfs pumping program at the Banks Pumping Plant. The biological opinions were issued in July and October 2004. In effect, the DWR and the Bureau state that the delays are due to their interactions with the CALFED agencies and with the agencies administering the federal Endangered Species Act, and are largely beyond their control. The DWR and the Bureau state that they have been pursuing this

matter diligently, that their draft EIR/EIS will be released in March 2005, and that they expect to begin operating the permanent barriers in late 2008.

The DWR and the Bureau argue that it is in the public interest for the State Water Board to delay the imposition of the 0.7 EC objective on their water right permits and license. They state that if they are required to meet the objective, they may have to release large amounts of water from upstream reservoirs. They believe that the increased flows alone, however, are unlikely to result in compliance with the objective at the three compliance stations. They argue, therefore, that efforts to comply with the 0.7 EC objective could result in a waste and unreasonable use of water in conflict with California Constitution, article X, section 2, and Water Code section 100.

Further, they argue that the necessary releases could significantly impact both the water available to meet other water quality objectives in D-1641 and the ability of the SWP and the CVP to meet their water supply obligations. They argue that without an extension of the effective date, they will be in danger of violating either the requirement in D-1641 to meet the objective or the prohibitions against waste or unreasonable use of water under California Constitution, article X, section 2, and Water Code section 100.

Further, they argue that there will be no injury to either agriculture or to the environment due to the delay because existing conditions will not change with an extension. The DWR and the Bureau currently meet the 1.0 EC objective in the southern Delta, implement the temporary barriers program, do site specific modifications to agricultural diversion, and comply with operational agreements to protect agriculture. These will continue. DWR will file a notice of exemption under CEQA for the temporary change.

DWR and the Bureau state that they expect to finalize their environmental documentation for the permanent barriers by the end of 2005. The barriers will take three years to construct.

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3.2 Requirement for Findings

As discussed in section 2.0 above, the State Water Board or its delegate must make all of the findings required by Water Code section 1435(b) before it can approve a temporary urgency change. In this case, the Department and the Bureau have waited until very close to the time when the objective will go into effect before seeking a change. Where a violation is threatened if a requirement remains in effect, and the requirement is in the public interest, the State Water Board believes that the more appropriate course is to bring the threatened violator into compliance rather than change the requirement to avoid the violation. If immediate compliance cannot reasonably be achieved, an enforcement action may include establishing a schedule of compliance. (See Wat. Code, § 1831, subd. (b).)

Based on the contents of the petition for temporary urgency change and the long history of promised channel improvements extending from the 1980's in draft agreements with the southern Delta agricultural interests, I am not convinced that two of the findings required by Water Code section 1435(b) are supported by this petition. Section 1435(b)(1) requires an urgent need to make the proposed change. To the extent that urgency may arguably exist, however, it appears to be an urgency to remove the requirement to meet the objective before it is violated, not an urgent need, as defined in section 1435(c), to make changes that further the constitutional policy requiring that water resources be put to full beneficial use and not wasted. I am not convinced that relieving the DWR and the Bureau of the requirement to meet the objective is supported by an urgent need. Delaying until a violation is imminent does not create an urgent need for a change, although it may well create an urgent need to take enforcement action.

Second, section 1435(b)(2) requires that the change be made without injury to any other lawful user of water. If there were not concerns that the high salinity is causing continuing injury to other legal users of water, the requirement would not have been necessary in the first place.

3.3 Related Proceedings

The EC objectives implemented by the condition on the permits and license of the DWR and the Bureau will be topics of consideration in March in an ongoing workshop on potential changes in

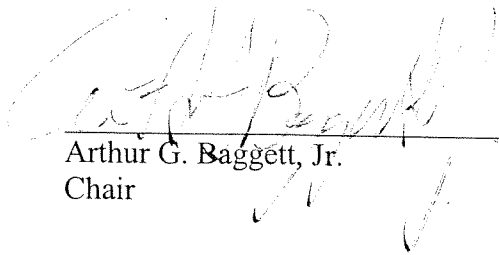
the 1995 Bay-Delta Plan. At the workshop, parties may address the question whether the EC objectives should be modified. Parties also may address the question whether the Program of Implementation in the 1995 Bay-Delta Plan should be amended to account for legal and regulatory changes or recent actions to improve habitat and meet water quality objectives.

While any changes in the 1995 Bay-Delta Plan would not have a direct effect on the conditions of the DWR's and the Bureau's water right permits and license, they could serve as a basis for the Board to consider future changes in the objectives and subsequently in the water right permits. Also, the airing of these topics in the workshop may expose information that might help the DWR and the Bureau to support a change in their permits and license. This order can be reconsidered if the DWR and the Bureau provide an appropriate cause for reconsideration as specified in the State Water Board's regulations at California Code of Regulations, title 23, sections 768-769.

ORDER

IT IS HEREBY ORDERED that the petition for temporary urgency change of Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A) of the DWR, and License 1986 (Application 23) and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12725, 12726, 12727, 11315, 11316, 16597, 20245, 11968, 11969, 11970, 12860, 11971, 11972, 11973, 12364, 16600, and 15735 (Applications 234, 1465, 5626, 5628, 5638, 9363, 9364, 9366, 9367, 9368, 13370, 13371, 14858A, 14858B, 15374, 15375, 15376, 15764, 16767, 15768, 17374, 17376, 19304, and 22316) if the Bureau is denied.

Dated: 24 July 2005



Arthur G. Baggett, Jr.
Chair

Exhibit

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2006-0012-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 6,000 ACRE-FEET OF WATER
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT
UNDER CALIFORNIA DEPARTMENT OF WATER RESOURCES
PERMIT 16482 (APPLICATION 17512)**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 27, 2006,

Department of Water Resources
c/o Nancy Quan, Chief
Bay-Delta Program Development
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, portions of the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512). Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer State Water Project (SWP) water is stored in San Luis Reservoir under the provisions of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare). Newton Farms and Hansen Ranches/Vista Verde Farms (Newton/Hansen) are farming interests who hold lands in both Tulare and WWD. These parties have requested that up to 6,000 acre-feet (af) of SWP water currently scheduled for use on their lands within Tulare's service area be transferred for use on their lands located within WWD. DWR submitted this petition for temporary change in place of use to facilitate this exchange. DWR has also indicated that local surface water supplies are available within Tulare. If the proposed temporary change is approved, Newton/Hansen will use these local surface water supplies to irrigate their lands within Tulare.

In the absence of the proposed temporary change, the 6,000 af of water proposed for transfer would be used by Newton/Hansen on their lands located within Tulare and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies.

2.0 BACKGROUND

2.1 Substantive of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972. It authorizes DWR to collect up to 1,100,000 acre feet per annum by storage, to be diverted from the Sacramento and San Joaquin watersheds and San Luis Creek between January 1 and December 31. The Clifton Court Forebay and the Tracy Pumping Plant, located within the San Francisco Bay/Sacramento-San Joaquin Delta (Delta), are authorized points of diversion/diversion under Permit 16482. Water diverted under Permit 16482 may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power within the SWP service area. The subject 6,000 af of SWP water is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by State Water Board Decision 1641 and State Water Board Order WR 98-9, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. The proposed transfer may result in temporary increases in the instantaneous release rate from San Luis Reservoir.

2.2 Place of Use under the Proposed Transfer DWR's petition requests the temporary addition of areas within WWD to the place of use of Permit 16482. These areas are located within Township 17S, Range 15E and Township 20S, Range 18E, MDB&M, and are shown on a map prepared by DWR available for viewing with the copy of the notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 17, 2006) was provided via regular mail to interested parties and by publication in the Fresno Bee on May 20, 2006. The Division did not receive any timely comments regarding the proposed temporary change.

4.0 REQUIRED FINDINGS OF FACT

Availability of Water for Transfer

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, § 1725.) The water available for the transfer is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by State Water Board Decision 1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

No Injury to Other Legal Users of Water

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within Tulare's service area, and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies. In order to reduce the potential for this transfer to increase salinity concentrations in the San Joaquin River, this order limits the place of use to specific areas within WWD

which do not have significant potential for either direct surface drainage to, or increased groundwater gradients towards, the San Joaquin River.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water.

No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) However, the State Water Board must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water available for the transfer is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by State Water Board Decision 1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime.

In general, irrigated land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's report, Generalized Depth to Shallow Ground Water, October 2005, indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. The lands scheduled to receive the water from this transfer are located such that they do not directly drain to the San Joaquin River.

In light of the above, I find that in accordance with Water Code section 1727(b)(2), the proposed transfer would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On May 16, 2002, the State Water Board adopted Resolution 2002-0106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the State Water Board conducts a hearing to accept additional evidence.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 6,000 acre-feet of water is approved.

All existing terms and conditions of Permit 16482 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing for one year.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement between Westlands Water District (WWD) and the Tulare Lake Basin Water Storage District, who is foregoing the delivery of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include 3,461 acres located within Township 17S, Range 15E and 875 acres located within Township 20S, Range 18E, MDB&M, as shown on map prepared by DWR for this transfer and titled *Areas of Water Transfer From Tulare Lake Storage District to Westlands Water District* (on file with the State Water Board under Application 17512 and available for viewing with the copy of the public notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program).
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. Within 60 days of the completion of the transfer, but no later than September 1, 2007, the permittee shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should also include the following information:

- a. Specific locations where the transferred water was used;
 - b. The monthly amounts of water each location received; and
 - c. The average application rate of water in the locations.
6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

7. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
8. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: July 3, 2006

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2007-0014-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 5,000 ACRE-FEET OF WATER
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT
UNDER CALIFORNIA DEPARTMENT OF WATER RESOURCES
PERMIT 16482 (APPLICATION 17512)**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 15, 2007,

Department of Water Resources
c/o Nancy Quan, Chief
Bay-Delta Program Development
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, portions of the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512). Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer State Water Project (SWP) water is stored in San Luis Reservoir under the provision of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare). Newton Farms and Hansen Ranches/Vista Verde Farms are farming interests that hold lands in both Tulare and WWD. These parties have requested that up to 5,000 acre-feet (af) of SWP water currently scheduled for use on their lands within Tulare's service area be transferred for use on their lands located within WWD. The petition requests that the proposed temporary change be effective from May 1, 2007 through April 30, 2008. DWR submitted this petition for temporary change in place of use to facilitate this exchange.

In the absence of the proposed temporary change, the 5,000 af of water proposed for transfer would be used by Newton/Hansen on their lands located within Tulare and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972, and it authorizes DWR to divert to storage up to 1,100,000 af of water between January 1 and December 31 of

each year. Authorized sources under Permit 16482 are the Sacramento-San Joaquin Delta Channels, Italian Slough, and San Luis Creek. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power. The subject 5,000 af of SWP water is either stored in San Luis Reservoir or will be stored under provisions of DWR's permits (set forth in State Water Resources Control Board Revised Decision 1641) and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Thus, the transfer of up to 5,000 af to WWD should have no effect on any natural streamflow or hydrologic regime. Release rates from San Luis Reservoir may increase due to the proposed transfer.

2.2 Place of Use under the Proposed Transfer DWR's petition requests the temporary addition of areas within WWD to the place of use of Permit 16482. These areas are located within Township 17S, Range 15E and Township 20S, Range 18E, MDB&M, and are shown on a map prepared by DWR available for viewing with the copy of the notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated March 26, 2007) was provided via regular mail to interested parties and by publication in the Fresno Bee on March 30, 2007. The Division did not receive any timely comments regarding the proposed temporary change.

4.0 REQUIRED FINDINGS OF FACT

Availability of Water for Transfer

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, § 1725.) The water available for the transfer is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by State Water Board Decision 1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

No Injury to Other Legal Users of Water

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within Tulare's service area, and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies. In order to reduce the potential for this transfer to increase salinity concentrations in the San Joaquin River, this order limits the place of use to specific areas within WWD which do not have significant potential for either direct surface drainage to, or increased groundwater gradients towards, the San Joaquin River.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water.

No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) However, the State Water Board must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482 which is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by State Water Board Decision 1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would be used within Tulare's service area, and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime.

In general, irrigated land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's map, Generalized Depth to Shallow Ground Water, October 2006, indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. The lands scheduled to receive the water from this transfer are located such that they do not directly drain to the San Joaquin River.

In light of the above, I find that in accordance with Water Code section 1727(b)(2), the proposed transfer would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On May 16, 2002, the State Water Board adopted Resolution 2002-0106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the State Water Board conducts a hearing to accept additional evidence.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 5,000 acre-feet of water is approved.

All existing terms and conditions of Permit 16482 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing through April 30, 2008.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement between Westlands Water District (WWD) and the Tulare Lake Basin Water Storage District, who is foregoing the delivery of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include 3,461 acres located within Township 17S, Range 15E and 875 acres located within Township 20S, Range 18E, MDB&M, as shown on map prepared by DWR for this transfer and titled *Areas of Water Transfer From Tulare Lake Storage District to Westlands Water District* (on file with the State Water Board under Application 17512 and available for viewing with the copy of the public notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program).
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. Within 60 days of the completion of the transfer, but no later than September 1, 2008, the permittee shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should also include the following information:

- a. Specific locations where the transferred water was used;
 - b. The monthly amounts of water each location received; and
 - c. The average application rate of water in the locations.
6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

7. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the

California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.

8. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: May 7, 2007

Exhibit

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2008-0031-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY URGENCY CHANGE
INVOLVING THE TRANSFER OF UP TO 4,000 ACRE-FEET OF WATER
FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT**

ORDER APPROVING TEMPORARY URGENCY CHANGE IN PLACE OF USE

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On June 19, 2008,

Department of Water Resources
c/o Nancy Quan, Chief
Project Water Contracts Branch
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a Petition for Temporary Urgency Change pursuant to Water Code Section 1435, et seq. If approved, portions of the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources (DWR) Permit 16482 (Application 17512). Temporary urgency changes filed pursuant to Water Code section 1435 may be effective for a period of up to 180 days.

1.1 Current Dry Conditions. On June 4, 2008, citing two straight years of below-average rainfall and significant restrictions on diversions from the Delta due to various factors, including federal court actions to protect fish species, Governor Schwarzenegger declared a statewide drought and issued Executive Order S-06-08 (Executive Order). The Executive Order directs DWR and other entities to take immediate action to address the serious drought conditions and water delivery limitations that currently exist in California. Importantly, it directs DWR to, among other things: 1) facilitate water transfers to respond to potential emergency shortages and water quality degradation; and 2) coordinate and implement SWP operations and water exchanges to alleviate critical impacts to San Joaquin Valley agriculture.

On June 12, 2008, after assessing the full impact that the severe water shortages have had on San Joaquin Valley agriculture, Governor Schwarzenegger issued a Proclamation, proclaiming a state of emergency within the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern. The Governor's Proclamation directs DWR, in coordination with USBR, to take the necessary steps and make the necessary operational changes that will allow more water to be delivered

to the San Joaquin Valley. Relevant to this petition, the Governor's proclamation directs DWR to do the following:

1. along with the State Water Board, expedite the processing of water transfer requests;
2. in cooperation with USBR, make operational changes to SWP facilities, including the San Luis Reservoir and Southern California reservoirs, that will permit additional water deliveries to the San Joaquin Valley; and
3. prepare and file necessary water right urgency change petitions to facilitate surface water transfers and the use of joint point of diversion by the SWP and CVP.

The Governor's Proclamation also directed the State Water Board to expedite the processing and consideration of water rights urgency change petitions filed by DWR and other agencies to facilitate water transfers to the San Joaquin Valley. To illustrate the urgent need for immediate action, the petition provides the following example:

Due to the extremely dry conditions and the impacts of the Delta smelt remedial actions imposed on the Projects' operations by the Wanger Decision, the current allocation to the SWP water users is only 35% of this year's contract amount and the allocation to CVP contractors was initially only 45% of their contract amount. The CVP allocation has now been reduced to 40%. Because of the 45% allocation that Westlands Water District initially received from the CVP, approximately one-third of the District's lands (200,000 acres) were fallowed this year. Even with the fallowing, crops planted this year and permanent crops have created an aggregate demand of approximately 350,000 acre-feet in June, July, and August. However, based on the amount of CVP water presently in storage at San Luis Reservoir and the District's projections of the amount of water the CVP will be able to pump at the Jones Pumping Plant between now and the end of August, the District calculated that the amount of water that it can reasonably expect to receive from the Project prior to the end of the low point period is approximately 240,000 acre-feet. This projection led the Westlands Water District Board of Directors to take action to ration the amount of water available to farmers until the end of the San Luis Reservoir low point period. The ration, apportioned among all irrigable acres in the District, excluding District owned lands, will result in 0.47 acre-feet being available to each irrigable acre. This is insufficient for permanent crops and has created an emergency situation where immediate action is needed to prevent the irretrievable loss of these crops.

The water proposed for transfer pursuant to this temporary urgency change will be used on land within Hansen-Vista Verde and Newton Farms for irrigation of permanent crops. These lands are located within Fresno County. The rationing of CVP supply in WWD threatens the health of those permanent crops.

1.2 Pending Petition for Temporary Change. On May 8, 2008, DWR submitted to the State Water Board a petition for temporary change requesting the transfer of up to 7,000 acre-feet (af) of SWP water from the Tulare Lake Basin Water Storage District (Tulare) service area to land within WWD in accordance with Water Code Section 1725, et seq. The comment period for the public notice of that petition expires on July 18, 2008. The 4,000 af requested under this petition is included in the quantity requested by DWR in its May 8, 2008 petition. The above-noted reduction in CVP water supplies has created an urgent need for supplemental water in advance of the date at which water might be available under DWR's May 8, 2008 petition.

1.3 Description of the Proposed Temporary Urgency Change. State Water Project (SWP) water is stored in San Luis Reservoir under the provision of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including Tulare. Newton Farms and Hansen Ranches/Vista Verde Farms are farming interests that hold lands in both Tulare and WWD. These parties have requested that up to 4,000 af of SWP water currently scheduled for use on their lands within Tulare's service area be transferred for immediate use on their lands located within WWD. The petitioner indicated that no additional groundwater will be pumped within Tulare as a result of this transfer. Since the petitioner has already filed a petition for temporary change to achieve this transfer, the proposed

temporary urgency change would be effective for a period of 180 days from the date of this Order, or when the State Water Board has made a determination regarding the previous petition for temporary change.

In the absence of the proposed temporary urgency change, the water would be used by the aforementioned parties on their lands located within Tulare.

1.4 Place of Use under the Proposed Transfer. DWR's petition requests the temporary addition of areas within WWD to the place of use of Permit 16482. These areas are located within Township 17S, Range 15E and Township 20S, Range 18E, MDB&M, and are shown on a map prepared by DWR available for viewing with the copy of the notice for DWR's May 8, 2008 petition posted on the Division of Water Rights' website at [www.waterrights.ca.gov/Water Transfers Program](http://www.waterrights.ca.gov/Water%20Transfers%20Program)

2.0 BACKGROUND

2.1 Substance of DWR's Permit. Permit 16482 was issued to DWR on September 26, 1972. It authorizes DWR to collect up to 1,100,000 acre feet per annum by storage, to be diverted from the Sacramento and San Joaquin watersheds and San Luis Creek between January 1 and December 31. The Clifton Court Forebay and the Tracy Pumping Plant, located within the San Francisco Bay/Sacramento-San Joaquin Delta (Delta), are authorized points of diversion/rediversion under Permit 16482. Water diverted under Permit 16482 may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power within the SWP service area. The subject 4,000 af of SWP water is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by State Water Board Revised Decision 1641 (D-1641), and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. The proposed transfer may result in temporary increases in the instantaneous release rate from San Luis Reservoir.

3.0 PUBLIC NOTICE

The State Water Board may issue a temporary change order in advance of public notice. (Wat.Code § 1438.) The State Water Board will comply with the noticing requirements as soon as practicable and retains jurisdiction to modify this order based on any comments or objections that it may receive in response to the public notice.

4.0 REQUIRED FINDINGS OF FACT

Chapter 6.6 of Part 2, Division 2, of the Water Code, commencing at section 1435, provides that any permittee (or licensee) who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The State Water Board's regulation, at California Code of Regulations, title 23, section 791(e), provides that the State Water Board shall follow as nearly as possible the procedures for changes in point of diversion, place of use, or purpose of use when processing petitions for other types of changes in water right permits and licenses. Accordingly, the procedures under section 1435 are applicable to changes to terms and conditions of water right permits and licenses.

The State Water Board must make the findings specified in section 1435(b) when issuing a temporary change order pursuant to Chapter 6.6. The required findings are:

1. The permittee has an urgent need to make the proposed change.
2. The proposed change may be made without injury to any other lawful user of water.
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

4. The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

4.1 The Permittee has an Urgent Need to Make the Proposed Change. Pursuant to Water Code section 1435 (c), an urgent need to make a proposed change exists when the State Water Board concludes that the proposed temporary urgency change is necessary to further the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented.

Current dry conditions, in combination with court-ordered pumping reductions, have significantly reduced SWP and CVP contract supplies. Governor Schwarzenegger has proclaimed a state of emergency in the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern due to the dry conditions. Without the proposed temporary urgency change, the potential for irretrievable loss of crops exists.

Based on these factors I find that the proposed temporary urgency change is necessary to the water resources of the State to beneficial use to the fullest extent of which they are capable and that waste of water be prevented. Additionally, I find that the petitioner has exercised due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

4.2 No Injury to Other Lawful Users of Water. The water proposed for transfer pursuant to this temporary urgency change consists of a portion of Tulare's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within Tulare's service area. The proposed temporary change will not alter the rate or timing of export pumping from the Delta.

In general, irrigated land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's map, Generalized Depth to Shallow Ground Water, October 2007, indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. In order to reduce the potential for this transfer to increase salinity concentrations in the San Joaquin River, this order limits the place of use to specific areas within WWD which do not have significant potential for either direct surface drainage to, or increased groundwater gradients towards, the San Joaquin River.

In light of the above, I find in accordance with Water Code section 1435(b)(2) that the proposed temporary urgency change will not injure other lawful users of water.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. In accordance with Water Code section 1435, the State Water Board must consider potential impacts on fish, wildlife, and other instream beneficial uses.

The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482 which is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by D-1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would be used within Tulare's service area. The proposed temporary change will not alter the rate or timing of export pumping from the Delta. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime.

In light of the above, I find in accordance with Water Code section 1435(b)(3) that the proposed temporary urgency change will have no unreasonable effect on fish, wildlife, or other instream beneficial uses.

4.4 The Proposed Change is in the Public Interest. Based on the discussion contained in Sections 4.1, 4.2, and 4.3, above, I find in accordance with Water Code section 1435(b)(4) that the proposed temporary urgency change is in the public interest.

5.0 ENVIRONMENTAL CONSIDERATIONS

The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482 which is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by D-1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would be used within Tulare's service area. The proposed temporary change will not alter the rate or timing of export pumping from the Delta. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime. Governor Schwarzenegger has proclaimed a state of emergency in the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern due to the dry conditions. Without the proposed temporary urgency change, the potential for irretrievable loss of crops exists within Fresno County.

Accordingly, approval of the proposed change is exempt from the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, section 15301. In addition, approval of the proposed change is exempt from CEQA pursuant to Public Resources Code sections 21080, subdivision (b)(3) and 21172 because the change is necessary to minimize damage to crops in the San Joaquin Valley.

6.0 STATE WATER BOARD DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, granting the authority to act on petitions for temporary urgency change to the Chief of the Division of Water Rights where no objections are outstanding. This order is adopted pursuant to the delegation of authority in section 4.4.1 of Resolution 2007-0057.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435; and therefore I find as follows:

1. The permittee has an urgent need to make the proposed temporary change.
2. The proposed temporary change will not operate to the injury of any other lawful user of water.
3. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The petitioned change is in the public interest.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary urgency change in the place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 4,000 acre-feet of water is approved.

All existing terms and conditions of Permit 16482 remain in effect, except as temporarily amended by the following provisions:

1. The temporary urgency change to facilitate the transfer/exchange of water pursuant to this Order is limited to a period of 180 days commencing on the date of this Order, or when the State Water Board has made a determination regarding the pending petition for temporary change under Permit 16482 filed by DWR on May 8, 2008.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement between Westlands Water District (WWD) and the Tulare Lake Basin Water Storage District, describing the delivery of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include 3,461 acres located within Township 17S, Range 15E and 875 acres located within Township 20S, Range 18E, MDB&M, as shown on map prepared by DWR for this transfer and titled *Areas of Water Transfer From Tulare Lake Storage District to Westlands Water District* (on file with the State Water Board under Application 17512 and available for viewing with the copy of the public notice for DWR's May 8, 2008 petition posted on the Division of Water Rights website at [www.waterrights.ca.gov/Water Transfers Program](http://www.waterrights.ca.gov/Water%20Transfers%20Program)).
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. By February 1, 2009, the permittee shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should also include the following information:

- a. Specific locations where the transferred water was used;
 - b. The monthly amounts of water each location received; and
 - c. The average application rate of water in the locations.
6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary urgency change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

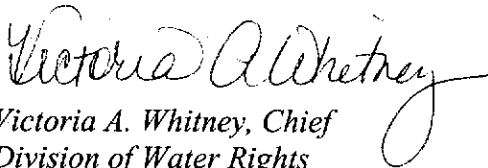
The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

7. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the

California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary urgency change, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.

8. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney, Chief
Division of Water Rights

Dated: **JUL - 3 2008**

Exhibit

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0026-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 8,000 ACRE-FEET OF WATER
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT
UNDER CALIFORNIA DEPARTMENT OF WATER RESOURCES
PERMIT 16482 (APPLICATION 17512)**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On January 22, 2009,

Department of Water Resources
c/o Robert B. Cooke, Chief
State Water Project Analysis Office
1416 Ninth Street, Suite 1620
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, portions of the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's (Reclamation) Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512). Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer State Water Project (SWP) water is stored in San Luis Reservoir under the provision of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare). Newton Farms and Hansen Ranches/Vista Verde Farms are farming interests that hold lands in both Tulare and WWD. These parties have requested that up to 8,000 acre-feet (af) of SWP water currently stored in San Luis Reservoir and scheduled for use on their lands within Tulare's service area be transferred for use on their lands located within WWD. DWR submitted this petition for temporary change in place of use to facilitate this exchange.

In the absence of the proposed temporary change, the 8,000 af of water proposed for transfer would be used by Newton/Hansen on their lands located within Tulare.

1.2 Additional Information In response to an inquiry from the Department of Fish and Game regarding water use within Tulare during the proposed change, DWR submitted additional information regarding cropping patterns for Newton Farms and Hansen Ranches/Vista Verde Farms between 2005 and 2008. The information submitted indicates that for each of these years the same amount of total acreage within these districts has been irrigated, though crop types have varied. DWR also states that surface water from the Kings River (stored in Pine Flat Reservoir) has been purchased by Newton Farms and Hansen Ranches/Vista Verde Farms for use in 2009 within their lands in Tulare.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972, and it authorizes DWR to divert to storage up to 1,100,000 af of water between January 1 and December 31 of each year. Authorized sources under Permit 16482 are the Sacramento-San Joaquin Delta Channels, Italian Slough, and San Luis Creek. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power. The subject 8,000 af of SWP water has been stored in San Luis Reservoir under provisions of DWR's permit (set forth in State Water Resources Control Board Revised Decision 1641) and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Thus, the transfer of up to 8,000 af to WWD will have no effect on any natural streamflow or hydrologic regime in the Delta or San Luis Creek. Release rates from San Luis Reservoir may increase due to the proposed transfer.

2.2 Place of Use under the Proposed Transfer DWR's petition requests the temporary addition of areas within WWD to the place of use of Permit 16482. These areas are located within Township 17S, Range 15E and Township 20S, Range 18E, MDB&M, and are shown on a map prepared by DWR available for viewing with the copy of the notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated February 4, 2009) was provided via regular mail to interested parties and by publication in the Fresno Bee on February 17, 2009. Central Delta Water Agency (CDWA) submitted timely comments to the proposed temporary change. CDWA's comments and the State Water Board's response are summarized below.

3.1 Comments of the Central Delta Water Agency CDWA asserts that the use of water within WWD is an unreasonable use of water under Article 10 section 2 of the California Constitution. CDWA states that no drainage outlet and disposal channel for the San Luis Unit of the CVP has been constructed. CDWA states that in February 2009, DWR and Reclamation (collectively referred to as the Projects) violated the conditions of their permits by not meeting the Delta Outflow objective in order to save cold water for protection of salmon. CDWA states that the proposed transfer should not be allowed unless the Projects have shown they have retained sufficient water in storage to meet the conditions of their permits through dry periods. CDWA concludes that the delivery of water without compliance with applicable permit conditions induces and subsidizes export water area use. In this case, CDWA asserts that the delivery of water to WWD is detrimental to the sustainability of agricultural uses along the west side of the San Joaquin Valley and all agricultural uses within the Delta.

CDWA also states that SWP water should be made available first to SWP contractors instead of to WWD, a federal water contractor, since there are currently SWP contractors in need of water.

3.2 State Water Board Response CDWA's assertions regarding compliance with Delta Outflow objectives and subsidy of export water area use are general concerns related to the underlying operations of the SWP and CVP. These concerns are not related to the temporary change, which will have no effect on the rate or timing of diversions from the Delta or storage in San Luis Reservoir.

With regard to the delivery of water to WWD pursuant to this Order, the State Water Board understands that agricultural deliveries to WWD may ultimately increase the subsurface flow of saline groundwater to the San Joaquin River. However, this process would take up to 10 to 20 years for water applied today to accrete to the San Joaquin River and be measured within the southern Delta. Regarding potential future increases in salinity due to the proposed temporary change, due to critically dry conditions in 2009, WWD's CVP allocation is currently 0%. Thus, even with the proposed temporary change (and other potential transfers to WWD), the amount of water delivered to WWD in 2009 will be significantly below the average annual deliveries for the years 2000 through 2008. Accordingly, the proposed temporary change

will not result in a significant future increase in salinity in the San Joaquin River above what would be expected to occur as a result of average year operations. Thus, the State Water Board will not include conditions in this order to address CDWA's concerns regarding the underlying operations of the SWP and CVP and general impacts of the delivery of water to WWD.

Finally, SWP contractors were provided notice of this petition and no SWP contractor filed comments in response. Accordingly, CDWA's concern that SWP water be delivered to SWP contractors currently in need of water, as opposed to WWD, was not raised by any SWP contractors.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, § 1725.) "[C]onsumptively used" means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion. (*Ibid.*) The water available for the transfer consists of a portion of Tulare's SWP entitlement under Permit 16482 and is currently stored in San Luis Reservoir under provisions of DWR's permit as amended by State Water Board Decision 1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would remain in storage until it is delivered for use within Tulare's service area. Accordingly, the water would be removed from use in the downstream water supply as a result of direct diversion under DWR's permit.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

4.2 No Injury to Other Legal Users of Water Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within Tulare's service area. Although agricultural deliveries to WWD may ultimately increase the subsurface flow of saline groundwater to the San Joaquin River within 10 to 20 years, due to critically dry conditions in 2009, the amount of water delivered to WWD in 2009 will be significantly below the average annual deliveries for the years 2000 through 2008. Accordingly, the proposed temporary change will not result in a significant future increase in salinity in the San Joaquin River above what would be expected to occur as a result of average year operations. In addition, the State Water Board will require as a condition of approval that WWD implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) However, the State Water Board must consider potential impacts to fish, wildlife, or other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482 which is currently stored in San Luis Reservoir under provisions of DWR's permit as amended by State Water Board Decision 1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would be used within Tulare's service area. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime.

In general, irrigated land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as some of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's map, Generalized Depth to Shallow Ground Water, October 2008, indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. The lands scheduled to receive the water from this transfer are located such that they do not directly drain to the San Joaquin River.

In light of the above, I find that in accordance with Water Code section 1727(b)(2), the proposed transfer would have no unreasonable effects on fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 8,000 acre-feet of water is approved.

All existing terms and conditions of Permit 16482 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing through March 30, 2010.
2. Prior to commencing the transfer, DWR shall provide to the Deputy Director for Water Rights a copy of the agreement between Westlands Water District (WWD) and the Tulare Lake Basin Water Storage District (Tulare), who is foregoing the delivery of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include 3,461 acres located within Township 17S, Range 15E and 875 acres located within Township 20S, Range 18E, MDB&M, as shown on map prepared by DWR for this transfer and titled *Areas of Water Transfer From Tulare Lake Storage District to Westlands Water District* (on file with the State Water Board under Application 17512 and available for viewing with the copy of the public notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program).
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. Within 60 days of the completion of the transfer, but no later than May 30, 2010, the permittee shall provide to the Deputy Director for Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should also include the following information:

- a. Specific locations where the transferred water was used;
 - b. The monthly amounts of water each location received; and
 - c. The average application rate of water in the locations.
6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

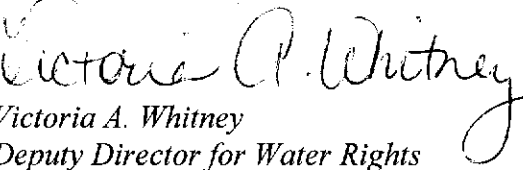
The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

7. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the

California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.

8. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **APR 03 2009**